

Mr. Downing: Objection, your Honor. It is immaterial to this lawsuit.

The Court: Sustained.

By Mr. Callaghan:

Q. How long had you known Mr. Swartz?

A. About three years.

Mr. Callaghan: If your Honor please, I respectfully submit that this man having been an associate of Mr. 440 Swartz for a matter of three years, that I am entitled to develop all of the matters in connection with that association to show the motive of this witness for testifying and the interest in the outcome of the litigation, and also to test his credibility.

The Court: Your objection may be noted, and it is overruled.

By Mr. Callaghan:

Q. You are not a defendant in this proceeding?

A. No, sir.

Q. The only proceeding in which you were a defendant was in Detroit, Michigan?

A. That's right, sir.

Q. And it is over 9 months now that your plea in Detroit has been pending, and is undisposed of, and you have not been sentenced in that, have you?

A. No, sir.

Q. And there is not even a date-set for your sentence, is there?

A. I don't believe so.

Q. Now, when did you last see this statement that you made to Scheer on July 28th?

A. I don't remember seeing it since July 28th.

441 Q. Pardon me, have you finished?

A. Since July 28—

Q. You have not seen it since July 28th?

A. I don't believe so.

Q. You are sure about that?

A. Almost positive.

Q. When, since July 28th, have you seen the other 4 or 5 statements that you made in this matter?

A. I never received any of the statements.

Q. Did you get copies of the statements that you made?

A. No, sir.

Q. Have they been shown you by anybody since you made them?

A. I don't believe so.

Q. When did you last see the statements that you made on August 25?

A. I don't remember. I don't remember seeing it.

Q. Would you say that you did not see it after August 25?

A. I did not see it.

Q. You did not see it after August 25?

A. I did not.

Q. Now, you came to Chicago in November of 1950, didn't you, Mr. Witness?

442 A. November—what was that?

Q. November of 1950?

A. I don't believe so.

Q. Well, when, after July 27th of 1950, were you again in Chicago?

(No response.)

Mr. Callaghan: May I have a drink of water?

By The Witness:

A. I was here. It might have been in November. I don't remember the exact date.

Q. Did your counsel accompany you on that trip?

A. I believe it was November.

Q. Do you want a drink, Mr. Marshall?

A. Yes, sir.

By The Witness:

A. It might have been November.

Q. You may have been here in November, 1950?

A. Yes, sir.

Q. Did you talk to Mr. Downing at that time?

A. I believe I did.

Q. Did you see your statements at that time?

A. No, sir.

Mr. Callaghan: May I see this list that this witness is supposed to have given to Mr. Scheer?

443 Mr. Downing: I will give you the list that Mr. Marshall gave to Mr. Scheer.

Mr. Callaghan: That Mr. Marshall said—

The Witness: I gave that to him.

The Court: You know, I might grant the motion, but since there was only colloquy—

Mr. Callaghan: I submit the witness has no part in that colloquy.

The Court: Neither should you or Mr. Downing have had.

Mr. Callaghan: Well, I will plead to that.

The Court: I will sentence you after this trial is over, and Mr. Downing, too.

By Mr. Callaghan:

Q. Now, when you got home on July 20th, did you count the cases before you put them into your store?

A. On July 20th I left my car overnight.

Q. All right, on the 21st, when you put them into your car, did you then count the cases?

A. Yes, sir.

Q. How many cases did you have?

A. There was—

Q. Just how many?

Mr. Downing: Let him answer.

444 By The Witness:

A. Thirty-two.

By Mr. Callaghan:

Q. When you got home on July 27, did you count the cases that you took out of your car?

A. I believe I did.

445 Q. Do you know how many cases you had at that time?

A. Nine or ten.

Q. Nine or ten?

A. Somewhere around there.

Q. Sir?

A. It was right around there, I don't remember the exact amount.

Q. How many cases did you have when you left Chicago?

A. I believe it was the same amount.

Q. Nine or ten?

A. Yes, sir.

Q. When you got to your home you still had nine or ten?

A. Yes, sir.

Q. On the 27th before you went out to your home—in Ferndale, is that right?

A. No, I live in Highland Park.

Q. Your store is in Ferndale?

A. Yes.

Mr. Downing: July 27?

Mr. Callaghan: Yes.

By Mr. Callaghan:

Q. You stopped at Swartz's house, didn't you?

A. On the way back?

Q. Sir?

446 A. On the way back from Chicago?

Q. Yes.

A. Yes, sir.

Q. Do you remember, what was the make-up of those nine or ten cases that you took out of Chicago on July 27?

A. I believe they were eight.

Q. You are sure now, by the way, you only took nine or ten at that time?

A. I don't remember the exact amount.

Q. Was it nine or was it ten?

A. I don't remember the exact amount.

Q. What is your best estimate of the exact amount?

A. Nine or ten.

Q. Either nine or ten?

A. Yes.

Q. What were those nine or ten cases made up of, what kind of film?

A. 8 millimeter roll type, cine Kodak Kodachrome.

Q. Is that all you took back from Chicago on July 27?

A. Are you talking about the 27th or this Saturday, the
22d?

Q. July 27, I am talking about.

A. No, sir, I took about thirty, around twenty-seven cases.

447 Q. All of my questions, in case we misunderstood each other, each of the last eight or ten questions has been dedicated to July 27.

A. Then there was a mistake.

Q. How many cases did you put into your home on July 27, I will ask you again?

A. In my home, none.

Q. Or in your store, speaking now, of July 27 or the day after.

A. Around 16, I believe.

Q. Sir?

A. Sixteen.

Q. Sixteen cases?

A. Somewhere around there.

Q. When prior to July, 1950, had you been in Chicago?

Mr. Downing: Objection, I think prior to July—

Mr. Callaghan: I promise your Honor it is not just a question.

The Court: When prior?

Mr. Callaghan: When prior to July, 1950, had he been in Chicago?

Mr. Downing: I think it is immaterial here. The date of the indictment is July 20—

448 The Court: What is it you want to bring out prior to the charges in the indictment?

Mr. Callaghan: I have a very definite reason for it.

The Court: I will permit him to answer one question to see what your next one will be.

The Witness: I believe it was about a month before I went to Revere Camera Company.

By Mr. Callaghan:

Q. How frequently had you been in Chicago prior to July, 1950?

A. I usually come down three, four, five times a year.

Q. But so far as driving conditions are concerned and street locations are concerned, you are a comparative stranger to Chicago, are you not?

A. My aunt lives in Chicago, I know the town fairly well.

Q. I don't care about your aunt.

Mr. Downing: Just a minute:

Mr. Callaghan: I move to strike that out.

The Court: Motion denied. The answer will stand.

By Mr. Callaghan:

Q. Will you answer the question I have asked, and
449 forget about your aunt?

Mr. Downing: I submit—

By the Witness:

A. I know north and south.

The Court: What did you say?

Mr. Downing: I submit the answer has already been made to the question.

The Court: I sustain you.

By Mr. Callaghan:

Q. You are familiar with the streets of Chicago, are you?

A. Some streets.

Q. And various locations, various streets?

A. Yes, sir, some streets.

Q. How many hundred north is Chicago Avenue?

A. That I don't know. I have only been—

Q. How many hundred north is Division Street?

A. Division runs east and west, I believe.

Q. How many hundred north is it, do you know?

Mr. Downing: Objection.

By the Witness:

A. I would say around 1100.

By Mr. Callaghan:

Q. How many hundred west is Jefferson?

450 Mr. Downing: Objection.

By the Witness:

A. I don't know where Jefferson is at.

The Court: Objection sustained. I think you have gone far enough to test his knowledge of the streets in Chicago.

451 By Mr. Callaghan:

Q. Mr. Witness, will you look at Government's Exhibit 83 for identification and tell me when you first saw that document?

A. July 27.

Q. July 27?

A. Yes, sir.

Q. At Chicago?

A. Yes, sir.

Q. In whose possession was it when you first saw it?

452 A. Mr. Gordon gave it to Mr. Swartz. Mr. Swartz gave it to me.

Mr. Callaghan: I move that be stricken.

Mr. Downing: Oh no.

Mr. Callaghan: As not responsive to the question.

The Court: Motion denied.

By Mr. Callaghan:

Q. In whose possession, Mr. Witness, was this document when you first saw it?

A. Mr. Gordon.

Q. You had been to 215 East Erie Street a matter of five days prior to this date, hadn't you?

Mr. Downing: To which date?

Mr. Callaghan: Prior to July 27 when he said he got this document.

By The Witness:

A. It was closed.

By Mr. Callaghan:

Q. You had been to 215 East Erie Street five days prior to this time, hadn't you?

Mr. Downing: If your Honor please—

By The Witness:

A. 215 East Erie, are you talking about this place or 215 Erie? 215 Erie I had never been to until the 27th.

453 By Mr. Callaghan:

Q. What is the address on that slip?

A. 215 Erie.

Mr. Downing: You are referring to Government's Exhibit—

The Witness: There are two addresses on there. There are two addresses on there.

Mr. Downing: Let the record show—

Mr. Callaghan: Government's Exhibit 83.

Mr. Downing: Let the record show there are two addresses on that.

Mr. Callaghan: I submit I should be permitted to finish this cross examination without the help of Mr. Downing. I don't need it, frankly.

The Court: Ask your question.

By Mr. Callaghan:

Q. You had been, had you not, to 215 East Erie on July 22?

A. No, sir.

Q. On July 22 you said you met Mr. Gordon at Division and Lake Shore, is that so?

A. Either Lake Shore Drive or Michigan.

Q. Or Michigan Avenue?

A. One of the two.

454 Q. And that Mr. Gordon got into his car and drove a couple of blocks and turned into an alley, didn't you?

A. I didn't say a couple of blocks. I said down by the corner of the alley.

Q. Down to the corner of the alley. As I understood your testimony, you indicated he drove a short distance and then turned into an alley, is that right?

A. Yes.

Q. And that was on July 22, was it?

A. Yes, sir.

Q. And you identified pictures shown you by the Government here—I have forgotten the numbers now—of that alley that you went to on July 22?

A. Yes, sir.

Q. And that was the rear of 215 East Erie Street, wasn't it?

A. No, sir.

Mr. Callaghan: May I have those pictures, please?
May I have all of them?

By Mr. Callaghan:

Q. Will you look at Government's Exhibit 87 for identification, Mr. Marshall?

455 A. This is 215 East Erie, the back. This is 217.

Q. Were you there on July 22?

A. No, sir.

Q. Were you ever in that alley?

A. Yes, sir.

Q. On July 22?

A. No, sir.

Q. Or on July 20?

A. No, sir.

Q. How long have you been in Chicago, Mr. Marshall?
I mean on the occasion of your coming for your testimony in this case.

A. I came last Thursday, a week ago yesterday.

Q. Have you been to the premises of 215 East Erie since you got here?

A. I don't believe so.

Q. You only have been here four or five days?

A. I beg your pardon?

Q. You have only been here five days?

A. Five days—I have been here eight days.

Mr. Callaghan: I want the record to show that it took the witness several seconds to make up his mind what his answer was to that question.

Mr. Downing: I object.

456 By Mr. Callaghan:

Q. And you are not sure whether you have been to 215 East Erie since you got here?

A. No, sir.

Q. Have you been to 215 East Erie since July 27?

A. No, sir.

Mr. Callaghan: That is all.

The Court: Take a recess of ten minutes.

(Recess taken.)

The Court: Mr. Walsh, cross examine on behalf of the defendant MacLeod.

Cross Examination

By Mr. Walsh:

Q. Mr. Marshall, did you at any time since the transactions about which you have testified seen Mr. Swartz give Mr. Gordon any money?

A. No, sir.

Q. Or did you see him give Mr. MacLeod any money?

A. No, sir.

Q. With regard to MacLeod, I believe you called him MacLeod on direct examination, is that right?

A. I believe it was.

Q. Where did you first hear his name?

457 A. I was shown a picture. I said that was the fellow named Ken, and I learned that his name was Ken MacLeod.

Q. Someone told you then his name was MacLeod?

A. Yes.

Q. And who was that someone?

A. I believe it was Mr. Scheer.

Q. Mr. Scheer?

A. Yes, sir.

Q. The FBI Agent?

A. Yes, sir.

Q. In Detroit, and when did that occur?

A. I don't remember the exact date.

Q. You don't remember the date?

A. No, sir.

Q. Well, was it prior to your appearance before the grand jury here in this case in Chicago?

A. Yes, sir.

Q. Just prior to entering the grand jury room?

A. It was prior. I don't remember.

Q. How many cases of film did you take back to Detroit, you and Swartz take back to Detroit, on the 27th?

A. It was about 27 cases.

Q. And what kind were they?

A. Mostly roll, roll type movie film, Kodak Kodachrome, and there was five or six cases of 100 millimeter professional Kodachrome.

Q. When you testified before the grand jury here in Chicago in connection with this case, did you tell that to the grand jury?

Mr. Downing: I object, your Honor, as to what he told the grand jury.

The Court: Sustained.

By Mr. Walsh:

Q. Did you tell the grand jury anything different than that—

Mr. Downing: Objection.

By Mr. Walsh:

Q. —about the number of rolls?

Mr. Downing: Objection as to what he told the grand jury.

The Court: If he said anything different, he may answer yes or no.

By The Witness:

A. I don't remember the exact testimony.

By Mr. Walsh:

Q. Was your testimony before the grand jury about that transaction the same as it is now?

A. I believe it was.

459 Q. And with regard to the 20th of July, how many rolls of film did you transport to Detroit with Swartz?

A. Approximately ten.

Q. About ten?

A. Yes, sir.

Q. This is the 20th.

A. Oh, 20th—I meant 22d. There was 34 on the 20th.

Q. 34?

A. Yes.

Q. And what kinds were they?

A. 11 cases of magazine film, 8 millimeter; 10 cases of roll movie film; and 13 cases of 300 each of the 116 box type camera film.

Q. Was your testimony before the grand jury in Chicago in regard to this case any different with respect to that transportation than it is now?

A. I don't believe so.

Q. You did not know this film was stolen when you took it to Detroit, did you?

A. No, sir.

Q. And you have told that to the FBI consistently, have you not, the Agents?

A. Yes, sir.

Q. Did you tell it to Mr. Downing?

460 A. I believe so.

Q. And have you told it to the grand jury in this case?

A. I believe so.

Q. I show you a document which I would like to have marked Defendants' Exhibit 5 for identification.

(Said document was marked Defendants' Exhibit 5 for identification.)

461 By Mr. Walsh:

Q. Will you look at this document and tell me if you have ever seen this document or the original of it? It purports to be a certified copy.

Mr. Downing: By that, he is referring to Defendants' Exhibit 5?

Mr. Walsh: 5 for identification.

Mr. Downing: To which I object, your Honor. It is immaterial as to this lawsuit, as to whether he has seen that document.

By The Witness:

A. Yes, sir, I have.

The Court: What is it? Do you have an objection? Do you want the answer stricken?

Mr. Downing: I think the objection should be made and both the question and answer should be stricken because I think the document is immaterial to this lawsuit.

The Court: Wait until I see the document.

Overruled. The answer may stand.

462 By Mr. Walsh:

Q. Will you state whether or not this is a certified copy?

The Court: That he cannot testify.

Mr. Downing: I object to that.

The Court: Ask your question. Whether or not it is a certified copy, he doesn't know.

By Mr. Walsh:

Q. Is this a copy—

Mr. Downing: The document speaks for itself.

The Court: Go ahead.

By Mr. Walsh:

Q. A certified copy of the information to which you pleaded guilty in Detroit before Judge Devin?

A. I believe it is.

Q. And you waived indictment before this was filed, did you not? You signed the document waiving indictment?

Mr. Downing: Objection, your Honor.

The Court: Sustained.

Mr. Downing: I don't think it is material.

The Court: I don't think it is material what the procedure over there was. The only reason I allowed you to ask about this was that I assume you were referring 463 to the number of cases. Isn't that what you were referring to? You were asking him about that immediately prior—

Mr. Walsh: No, that was not my point.

The Court: Oh, that was the reason I let him answer.

Mr. Walsh: I will get at it now, Judge.

By Mr. Walsh:

Q. Mr. Marshall, you have stated now on direct and on cross examination—I am not sure it was gone into on direct—that you have not been given any promises for your testimony.

Is that right?

A. That is right.

Q. Any promise of immunity or reward. Is that true?

A. That is true.

Q. But you have not been sentenced?

A. No, sir.

Mr. Downing: I object.

By Mr. Walsh:

Q. In connection with this plea of guilty, is that right?

A. No, sir.

The Court: That has been gone into.

464 By Mr. Walsh:

Q. Have you been given any threats in connection with testifying here?

A. No, sir.

Q. This indictment, or this information charges that you transported the property knowing it to be stolen, doesn't it?

Mr. Downing: If your Honor please, the document speaks for itself. Furthermore—

The Court: Sustained.

By Mr. Walsh:

Q. Will you tell the court and jury whether any statements were made to you to induce you to plead guilty to this indictment?

Mr. Downing: Objection as to that. Certainly—

The Court: To induce him to plead guilty in Detroit? Sustained. If there were any statements made to induce

him to testify here, you can ask. I don't care what they did in Detroit.

By Mr. Walsh:

Q. You have cooperated with the FBI in this matter since your plea, have you not, with the Agents?

A. I think so.

465 Q. You think so. That is, you have done what they have requested you to do?

A. Yes, sir.

Q. How many statements altogether would you say you have signed?

Mr. Downing: Just a minute, your Honor. Objection for repetition.

The Court: Sustained. We agreed that both would cross examine, but that was all thoroughly gone into by Mr. Callaghan's cross examination, and it becomes repetitious. We were going to eliminate repetition in our cross examination, if you remember.

Mr. Walsh: If it please your Honor—

The Court: If you want to take the witness first next time, I will let you do that, but he has gone into that so thoroughly, how many statements he signed, that it would unnecessarily protract the trial.

Mr. Walsh: He went into it from the point of promises made to him. I want to go into it from the point of view of threats.

The Court: You just asked him if there were any threats and he denied it.

466 By Mr. Walsh:

Q. When you went to 215 East Erie Street on the 27th with Mr. Swartz did you ring the bell or knock at the door when you arrived there?

A. Yes, sir.

Q. Who did that, you?

A. I did.

Q. And who answered the door?

A. Mr. Ken.

Q. And what did you say?

A. I said, "Is Ken here"?

Q. And what did he say?

A. He said, "I'm Ken."

Q. I believe you stated both on direct examination and cross examination that you did not know, or that you don't know—

A. Don't know what?

Q. Whether Mr. MacLeod was present on the 20th or not; that it resembles him.

A. I said a man resembling Mr. McLeod—

Q. How long were you in his presence on the 27th?

A. Ten or fifteen minutes.

Q. Did all three of you go back to this garage in the rear of 217?

467 A. Mr. MacLeod and Mr. Swartz and myself did.

Q. Who loaded the film in your car?

A. Mr. MacLeod and myself.

Q. Mr. Swartz didn't do any lifting?

A. Mr. Swartz—

Q. Did he or not, yes or no?

A. No, sir.

Q. Prior to July 27, 1950, had you ever had any transactions with Mr. MacLeod?

A. Repeat that question, please.

Q. Prior to July 27, 1950?

A. Outside of—I thought it was him on the 20th—no, sir.

Q. But you are not certain it was him?

A. No, sir.

Q. On the 20th?

A. No, sir.

Q. You are not certain beyond a reasonable doubt?

A. It resembled Mr. MacLeod but I am not certain.

Q. That is as far as you want to go?

A. Yes, sir.

Q. Then on the 22nd Mr. MacLeod had nothing to do with that transaction to your knowledge?

A. No, sir.

468 Q. You made your sale to Mr. Ahee on what date?
Mr. Downing: Objection, your Honor. The sale was all thoroughly discussed.

Mr. Walsh: No. I think I can cross examine to some extent. My man's liberty is in jeopardy just as much as the other man's.

Mr. Downing: Certainly.

The Court: I will let him answer this much, but don't be repetitious. We agreed that if you want to take a witness first instead of Mr. Callaghan taking him first, you can do that, and obviously whoever cross examines first

will do the major part. I don't want to restrict you in anything that will protect the interests of your client.

On the other hand, I don't want unnecessary repetition. I want to finish with this witness this morning. You use your own judgment. If you think it is necessary for you to go into this for your client, I will permit you to do so, but I will ask you to abide by the agreement all of you made with me in the beginning of the trial, that you can elect which one wants to take the witness first for cross examination; and the second man will not repeat any more than necessary what has been gone into by the first one.

You follow that. You understand it as well as I do.

Mr. Walsh: I suggest to your Honor—

By The Court: If you think it is necessary go ahead.

Mr. Walsh: I would like to talk with your Honor outside of the presence of the jury on that.

The Court: No. You go ahead with your examination.

By Mr. Walsh:

Q. Mr. Marshall, you made your first sale to Ahee when?

A. I believe it was Friday the 21st.

Q. 21st?

A. Yes, sir.

Q. And then after that did you sell and deliver any more to him?

A. Yes, sir, on Monday.

Q. On Monday. And when was your next transaction with him?

470 A. The 28th.

Q. Tell us the details of that transaction.

A. I put—

Q. Did he telephone you to start the transaction?

A. I believe he did.

Q. At your place of business?

A. Yes, sir.

Q. And then did you after that phone conversation take two cases of film—

A. No, I put three cases in my car and went downtown.

Q. Downtown?

A. Parked my car in a parking lot.

Q. What street?

A. Clifford and Bagley.

Q. Sir?

A. Clifford and Madison—

Q. How close is that to Ahee's store?

A. A block and a half.

Q. Did you park there with the intention of being close to his store?

A. I parked there almost every time I would go downtown.

Q. Did you intend to go to Ahee's store on this occasion with the film?

471 A. Yes, sir.

Q. And did you go out there?

A. Yes, sir.

Q. To his store?

A. Yes, sir.

Q. Did you deliver the film?

A. No, sir. Mr. Ahee and myself went out and had dinner, and then Mr. Ahee got his car and drove over to my car, and I gave him the two cases of film and left one in my car.

Q. You left one in your car, and that was on the 28th?

A. Yes.

Q. Mr. Ahee left you?

A. Yes, sir, Mr. Ahee left me.

Q. With the film. Where did you go?

A. I went to the Metropolitan Building, 33 Jonar.

Q. Eventually you came back to your car, is that right?

A. Yes, sir.

Q. You parked it somewhere on Woodward Street. I believe you told us?

A. No, sir.

Q. On Woodward Avenue?

A. No, sir. I parked it on Jonar and Madison.

Q. Didn't Mr. Scheer come up to you on Woodward Avenue, or did I misunderstand?

472 A. I drove a friend of mine down to Jefferson, and then I started back towards my store, and Mr. Scheer stopped me on Woodward.

Q. Did he curb you with another automobile?

A. Yes, sir.

Q. Was he alone?

A. No, sir.

Q. Another Agent?

A. Yes, sir.

Q. Did he pull you over to curb?

A. No, I parked right there?

Q. Did you intend to stop there or did they order you to stop?

A. No, sir, I parked there and went to get a coke.

Q. Walked into a store?

A. Yes, sir.

Q. Did you see them in their car before you parked?

A. Yes, sir.

Q. And where were they in their car?

A. They were behind me.

Q. Sir?

A. They were behind me.

Q. Were they parked?

473 A. No, sir.

Q. Or following you?

A. Following me.

Q. Did you stop to see if they were following you?

A. Yes, sir.

Q. I see. And they came there and arrested you, is that right?

A. They came there and—yes, sir, they arrested me.

Q. And how long was it after that that you made a statement?

A. That same evening.

Q. Now, you didn't turn over some documents here until August 27, is that right?

A. That is right.

Q. Did you see Agent Scheer in the meantime?

A. I believe I seen him once or twice.

Q. Were you arraigned in connection with that arrest?

Mr. Downing: Just a minute. I object to that. That is repetitious.

The Court: Sustained. It is immaterial in any event.

Mr. Walsh: I want to find out simply whether he was conscious that he was in custody or under bail when he was making all these statements:

474 The Court: It is immaterial. Sustained.

By Mr. Walsh:

Q. Have you seen Mr. MacLeod since July 27, 1950?

A. Yesterday.

Q. Yesterday. And were you in the company of an Agent at that time?

A. I was in the court room.

Q. Sir?

A. I was in the court room.

Q. Oh, you didn't see him until you came into the court room again?

A. No, sir.

Q. Now, in connection with this doubt as to whether you visited 215 East Erie Street during the last five days since last Thursday, as a matter of fact you went out with some Agents of the FBI to take pictures of various places, didn't you?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Did you make any tour of Chicago with the idea of identifying premises—

A. Yes, sir.

Q. In the company of Agents?

475 A. Yes, sir.

Q. Who were those Agents?

A. I don't remember their names right now.

Q. You don't remember. Are they here now? How about Mr. McCormick?

A. I am not sure whether Mr. McCormick was there or not.

Q. Mr. Mehegan?

A. I don't believe Mr. Mehegan was there.

Q. Mr. Scheer here?

A. I believe Mr. Scheer was along.

Q. And as you rode around you discussed whether this building was 215 East Erie or whether it was not, didn't you?

A. I don't believe we went to 215 East Erie. We went to—

Q. Other places?

A. One spot where I went the second time.

476 Q. How long did your trip take?

A. About an hour or an hour and a half.

Q. Now, before I close, on each and every occasion that you have been asked about the transportation of this

material, of this film, you have stated, have you not, that you did not know it was stolen when you transported it?

A. Except for the final plea there.

Q. Other than your plea of guilty?

A. Yes, sir.

Q. And, as a matter of fact, on that occasion you started to say something about it and were stopped, weren't you?

Mr. Downing: Objection.

The Court: Sustained.

The Witness: I was under legal counsel.

The Court: There is no question.

By Mr. Callaghan:

Q. And your counsel made an agreement with the Court?

A. I don't know.

Mr. Downing: Objection.

The Court: Sustained.

Mr. Walsh: That is all.

The Court: Is there any redirect?

477 Mr. Downing: Yes.

Redirect Examination

By Mr. Downing:

Q. Mr. Marshall, you identified Mr. Swartz. Actually there are two Mr. Swartzs that you have identified in this examination, is that right?

A. That's right.

Q. And they named the person who made the shipments with you to Chicago, as you testified, his name is Al Swartz, is that right?

A. Yes, sir.

Q. And your attorney's name is Frank Schwartz?

A. Frank Schwartz.

Q. It is spelled differently?

A. It is spelled differently.

Q. So that is not the same person?

A. No, sir.

Q. Now, in view of the cross examination on the quantity of film you took—

Mr. Callaghan: I object to counsel posing speech before he asks the question.

The Court: Sustained. Ask the question.

By Mr. Downing:

478 Q. How many cases of film did you take back with you to Detroit, Michigan on the 20th of July, 1950?

A. 34.

Mr. Walsh: On the point of repetition, I object to that as having been gone into on direct—

The Court: I think that was sufficiently covered.

Mr. Downing: The only point is that there were numerous questions asked on cross examination in an attempt to confuse the issue—

Mr. Callaghan: I object to that.

Mr. Walsh: I object to that and I move for the withdrawal of a juror.

The Court: The motion is denied, and the statement may be stricken. I sustain the objection, and I think there are a number of these things. If I open it on redirect, we will have further on recross on it, and I understand we want to finish this session this morning.

Mr. Downing: I have one more question, then, Your Honor.

By Mr. Downing:

479 Q. With respect to the person you saw at 2:15 you identified as Ken, I believe you stated that on cross examination. Is that the Kenneth MacLeod that you see here and pointed out yesterday in the courtroom?

A. Yes, sir.

Mr. Downing: That is all.

The Court: Is there any recross?

Mr. Callaghan: No.

The Court: Is there any recross, Mr. Walsh?

Mr. Walsh: No, Your Honor.

(Witness excused.)

480 Mr. Downing: If your Honor please, there is a ruling pending on Government Exhibit 89 which I had offered.

The Court: Oh, excuse me. Hand it up.

Objections, if any, to Government Exhibit 89.

Mr. Callaghan: Yes, I object to that as being a self-serving statement of the witness, a statement made by the witness out of the presence of the defendants, and in no sense and in no wise binding on the defendants, and it is something simply that the witness made up at the time he gave, or at the time the agent went to get something from his store.

The Court: He testified in accordance with this? Was the testimony in any wise different?

Mr. Downing: He testified that he turned over the cartons described in that exhibit there to the agent of the FBI.

The Court: And in the numbers indicated?

Mr. Downing: No, he did not indicate—yes, but he didn't state for the record the quantities by the type, as illustrated in that exhibit.

481 The Court: But he testified he did turn them over?

Mr. Downing: Oh yes.

The Court: I think in so far as it is helpful it would only corroborate his testimony. It was for the purpose of refreshing his recollection, for which purpose I permitted him to use it.

Mr. Downing: Yes.

The Court: I see no purpose in cluttering the record with it.

Mr. Downing: Other than the fact that it definitely shows it by type of carton.

482 The Court: Well, I think he testified sufficiently.

Mr. Callaghan: I suggest he put in evidence the five statements the witness made, instead of that.

Mr. Downing: I object to the gratuitous statement of counsel when we are not discussing that.

The Court: The exhibit 89 will be withdrawn, or I will sustain the defendant's objection.

Mr. Downing: I will withdraw it.

The Court: I think it served every purpose it can thus far without receiving it.

Mr. Downing: I withdraw it at this particular time, then.

The Court: Very well.

HENRY A. SCHUTZ, JR., called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. Henry A. Schutz, Jr.

The Court: How do you spell the last name?

The Witness: Schutz.

483 By Mr. Downing:

Q. What is your business or occupation, Mr. Schutz?

A. Special Agent for the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Nearly four years.

Q. And at what office are you now stationed?

A. In Detroit, in the Field Division.

Q. And you were so stationed in July and August, 1950?

A. I was.

-Q. Directing your attention to Government's exhibits 1 to 8, 10 to 16, 24 to 25, 27 through 43, and 45 through 52, I ask you if you will step down from the witness stand and look at these exhibits which are lined up here in front of the—

Now, will you resume the witness stand, Mr. Schutz. I ask you if you have seen those exhibits before?

A. Yes, I have.

Q. And what date did you first see those exhibits?

A. On July 28, 1950.

Q. Where did you see them?

A. In the basement of 157 West Nine-Mile Road, Ferndale.

Q. Do you know what the name of that establishment is?

484 A. That is a jewelry store belonging to Mr. James Marshall.

Q. Who else was present at that time?

A. Special Agents Transeith and Sullivan.

Q. And did you place your initials on each of those exhibits?

A. I did.

Q. On what date did you place your initials thereon?

A. On July 28, 1950.

Q. For the purposes of illustration of one of the exhibits, were you identifying Government's exhibit 2 marked for identification—

Mr. Callaghan: I object. This is purely cumulative.

The Court: Just let him on one of them show the initial.

Mr. Downing: Yes.

By Mr. Downing:

Q. Show where your initials are, please.

A. My initials up here, there—"H. A. S."

Q. That is the second initial appearing below the date, is that right?

A. Yes.

Q. Are you acquainted with James Marshall?

A. I am.

485 Q. Was James Marshall present at the time you obtained these exhibits?

A. He was.

Q. And at that time was an inventory prepared of the cartons which you obtained at that location?

A. Yes, there was.

Q. I show you Government's exhibit 90, marked for identification, and ask you to look at that, and I ask you if you have seen that before?

A. Yes, I have.

Q. And by whom was that exhibit prepared?

A. It was prepared by Special Agent Norman Transeth and Special Agent Sullivan, and myself.

Q. Who actually wrote it up?

A. Mr. Transeth.

Q. And when was that document prepared?

A. At the time that we obtained these boxes, or cartons of film from Mr. Marshall's basement, on July 28, 1950.

Q. Was it prepared out or written out in Mr. Marshall's jewelry store there?

A. That's right.

Q. Now, is that document signed by you, Mr. Schutz?

A. Yes, it is.

486 Q. And with respect to the signatures appearing thereon, is your signature the third signature appearing on the document?

A. Yes, it is.

Q. And when was that signature affixed thereto by yourself.

A. It was affixed on that date, on July 28, 1950.

Q. Now, is that a list of the inventory of cartons which you previously identified here in the court room?

A. Yes, it is.

Q. With respect to these cartons that you have identified, which you have previously testified about, were they full at the time that you first saw them?

A. Yes, they were all full, with the exception of two, one carton, or one pack, a roll of film was missing from one of these cases, and another case, there were two 100 rolls missing.

Q. Do you remember the type of film those were?

A. 16 millimeter.

Q. And is that in the type as illustrated by the carton, Government's exhibit 2, marked for identification?

A. Yes, sir, it was.

Q. Now, what, if anything, did you do with the cartons after locating them in Marshall's basement, and 487 inventorying them, as you testified?

A. We removed the cartons to two automobiles that we had outside, and drove to the office of the Federal Bureau of Investigation, at which time we unloaded the film at the office.

Q. Did you then place it in the office of the Federal Bureau of Investigation?

A. Yes, we did.

Q. That took place in Detroit, Michigan, on July 28, 1950?

A. That's right, sir.

Q. I show you Government's exhibit 89, marked for identification, and I ask you to look at that, and I ask you if you have seen that before?

A. Yes, sir, I have.

Q. I ask you with respect to that document, was that signed in your presence?

A. Yes, it was.

Mr. Callaghan: That is objected to. Your Honor just sustained an objection to that exhibit, and he again tenders it to another witness.

The Court: I allowed him to withdraw it, and he said he would present it again, I believe.

488 By Mr. Downing:

Q. Who was that signed by in your presence?

A. It was signed by James I. Marshall.

Q. When was it signed in your presence?

A. On the evening of July 28, 1950.

Mr. Downing: You may cross examine.

492 ROBERT C. MURPHY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. Robert C. Murphy.

Q. What is your business or occupation, Mr. Murphy?

A. I am a special agent of the Federal Bureau of Investigation.

Q. How long have you been so engaged?

A. Nine and a half years.

Q. What office are you now stationed at?

A. Detroit, Michigan.

Q. And were you so stationed there in July and August of 1950?

A. Yes, sir.

Q. Directing your attention to Government Exhibit 9, 29 and 44—

A. Yes, sir.

Q. I ask you to look at each of those, and I ask you if you have seen them before?

A. Yes, sir.

Q. On what date did you first see them?

493 A. On July 28, 1950.

Q. Where were you when you first saw those?

A. At the residence of Edmund A. Ahee.

Q. And in what town did Mr. Ahee live at that time?

A. Detroit, Michigan.

Q. Did you obtain these cartons from Mr. Ahee on that date?

A. Yes, sir.

Q. And at that time did you place your initials or name on each of the cartons?

A. I did.

Q. Now, showing you Government Exhibit 9, marked for identification, will you point out to the Court and jury your initials and name?

A. My initials appear on this box, Your Honor.

The Court: All right.

By The Witness:

A. (Continuing) Here are my initials with the date (indicating).

By Mr. Downing:

Q. Those are the initials "R.C.M.," is that right?

A. Yes, sir.

Q. On what date were those affixed thereto?

A. On July 28, 1950.

494 Q. And do the same initials and the same date appear on the other two exhibits which I have heretofore

shown you?

A. Yes, sir.

Q. Now, with respect to these cartons, at the time you obtained them, what was their condition? Were they full or empty?

A. One of them was completely full.

Q. Do you recall which of the three it was?

A. It would be ~~one~~ of these two, Sir (indicating). I wouldn't know which one.

Q. By "these two," you are referring to Government Exhibits 26 and 44, is that right?

A. Yes, sir.

Q. With respect to the other two cartons, what was their condition?

A. One carton had 75 rolls in it, and the other one—

Q. Is that one of the cartons?

A. That would be this exhibit here, Sir.

Q. One of the 26 or the 44?

A. Yes.

Q. How about Government Exhibit 9?

A. Government Exhibit 9 had 198 rolls in it.

Q. After obtaining these cartons and placing your 495 initials thereon, what, if anything, did you do with the cartons and their contents?

A. I put them in the Bureau car and drove them down to our office, and deposited them in our office.

Q. That is the Federal Bureau of Investigation office in Detroit, is that right?

A. Yes, sir.

Mr. Downing: You may cross examine.

496 LEO C. SHIRLEY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. What is your name?

A. Leo C. Shirley.

The Court: Spell the last name.

497 The Witness: S-h-i-r-l-e-y.

By Mr. Downing:

Q. What is your business or occupation?

A. Special Agent of the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Since 1942.

Q. At what office are you now stationed?

A. Detroit.

Q. And you were so stationed in July and August of 1950?

A. Yes, sir.

Q. Directing your attention to Government Exhibits 17 through 23, I ask you to look at them and ask you if you have seen them before.

A. Yes, I saw this first one; it has my name on it.

Q. By the "first one," you are referring to Government Exhibit 17?

A. And on this one, I have my name on it.

Q. By "this," you are referring to Government Exhibit 23?

Mr. Callaghan: May I suggest that the witness examine all of them, and make one answer, in order to save a lot of time?

498 The Court: All right.

By Mr. Downing:

Q. You can do that. Examine all of them and make one answer.

What is your answer?

A. I have my name, Leo C. Shirley, on each one of those cartons, with the date July 31, 1950.

Q. And where were you when you obtained those cartons?

A. At the Acme Photo Shop in Detroit.

Q. And did the Acme Photo Company turn them over to you on that date?

A. The Acme Photo Company offered to release—

Mr. Callaghan: Wait a minute, please. I object to that.

The Court: Sustained. State what happened. This is direct examination.

By Mr. Downing:

Q. Did you take them into your possession on that date?

A. Yes, sir.

Q. With respect to these cartons, at that time when you obtained them, what was their condition, full or empty?

A. Six of the cartons were full, and the seventh one was partly filled.

Q. After obtaining these cartons and placing your 499 initials thereon, what, if anything, did you do with them?

A. We placed the cartons in the storeroom of the Acme Photo Shop, pending further disposition.

Q. That was the last that you had anything to do with them at that time, is that right?

A. That's right.

Q. Do you recall the quantity in the carton that was not completely full?

A. 23 rolls were in the carton that had been broken open.

Mr. Downing: That is all.

Mr. Callaghan: Mr. Downing, will you tell me the numbers, again, and I won't cross examine him?

Mr. Downing: 17 to 23.

The Court: You have no questions, Mr. Callaghan?

Mr. Callaghan: That's right, Sir.

501

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

Before Judge Campbell and a Jury,

Monday, June 4, 1951,

10:00 o'clock, a. m.

Court met pursuant to adjournment.

502 (The following proceedings were had in the presence and hearing of the jury).

H. E. BRADLEY SCHEER, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. H. E. Bradley Scheer.

The Court: Spell the last name.

By The Witness:

A. S-c-h-e-e-r.

By Mr. Downing:

Q. What is your business or occupation, Mr. Scheer?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Three years and three months.

Q. During the period of July—from July through December, 1950, in what office were you stationed?

A. I was in the Detroit Field Office.

Q. I will show you Government's exhibit 53, marked for identification, and ask you to look at that and ask you 503 if you have seen it before?

A. I have.

Q. What date did you first see that exhibit?

A. On July 28, 1950.

Q. Where were you at that time?

A. In Detroit, Michigan.

Q. Who else was present at the time?

A. Well, Agent Leo Robertson was present, Leo Shirley, Agent Schutz was nearby, and James Erwin Marshall.

Q. From whom did you obtain that exhibit?

A. From Mr. Marshall.

Q. Where did Mr. Marshall have the exhibit at the time you obtained it?

A. It was in the trunk of his automobile.

Q. Did you see the automobile at that time?

A. I did.

Q. Will you describe the car that you saw at that time?

A. The car was a 1950 Buick Roadmaster, with a bluish grey body, dark blue top, had a 1950 Michigan license number, E.M. 9645.

Q. At that time what was the condition of the carton? Was it full or empty?

A. The carton was full and sealed.

Q. Did you place your name or initials on the car- 504 ton at that time?

A. I did.

Q. Will you point them out, please?

A. Here on the end.

Q. By that you are referring to the initials and the name "H. E. Bradley Scheer," is that right?

A. That is right.

Q. Was that placed thereon on July 28, 1950?

A. That was.

Q. Mr. Scheer, if you will step down and look at the Government's exhibits here, 54 through 65?

(The witness stepped down off the witness chair to examine the exhibits.)

By Mr. Downing:

Q. Take the witness stand again.

A. Yes.

Q. Now, directing your attention to those exhibits, Government's exhibits 54 to 65, have you seen those before?

A. I have.

Q. On what date did you first see those exhibits?

A. At the date you have on the exhibit, 12-18-50, December 18, 1950.

Q. Where were you when you first saw those exhibits?

505 A. In the basement of the building where the FBI office is located in Detroit.

Q. From whom did you obtain these exhibits at that time?

A. Albert Swartz.

Q. Now, at that time did Albert Swartz place his name or initials or writing on each of these documents?

A. He did, except for the one.

Q. By the one, to what do you refer?

A. Well, on one he wrote "Delivered to" and placed the date and failing to put his name on at the time.

Q. Did you see him affix the other writing on that carton to which you refer?

A. I did.

Q. With respect to Government's exhibit 65, that is one of the group of cartons you received at that time?

A. That was.

Q. Approximately how many boxes of film were in the carton at that time?

A. There were 30 of the boxes of the 16 millimeter commercial Kodachrome film.

Q. With respect to the carton, Government's exhibit 64 which I hand you, how many rolls of film were in the carton at that time?

506 A. There were 4 packages of 25 each of the 116 Verichrome.

Q. With respect to the balance of the cartons which I have shown you in this group of exhibits, was there condition at that time the same as the condition that exists here in the court room at this time?

A. I believe it is. There were ten cartons and one of them had seven rolls missing from one of the cartons.

Q. The balance of the cartons were full, is that right?

A. Yes.

Q. With respect to Government's exhibit 55, the first one I showed you, and Government's exhibits 54 through 65, have these cartons been in the custody of the FBI since that date?

A. They have.

Q. Did you affix your initials or name to each of the cartons, Government's exhibits 54 to 65, that is, this group of cartons, that is, this group of cartons?

A. Those there, yes.

Q. When did you affix your name or initials to each of those cartons?

A. On the date they were received.

Q. December 18, 1950, as you have pointed out previously, is that right?

507 A. Yes.

Q. I direct your attention to Government's exhibit 56, marked for identification, and ask you to look at that and ask you if you have seen that before?

A. I have.

Q. On what date did you first see that exhibit?

A. August 28, 1950.

Q. Where were you at that time?

A. In the office of Dr. Earl Flick, Royal Oak, Mich.

Q. Did you obtain the exhibit from Dr. Flick at that time?

A. I did.

508 Q. What, if anything else, did you obtain from Dr. Flick at that time and place?

A. Well, I received twelve other rolls similar to this.

Q. With respect to the exhibit that you have in your hand, Government's Exhibit 66, has that been in the custody of the FBI since that time?

A. It has.

Mr. Callaghan: I didn't hear you, Mr. Downing.

Your Honor, I didn't hear the question.

The Court: Read the question.

(Question read.)

The Court: Proceed.

By Mr. Downing:

Q. I show you a group of exhibits identified as Government's Exhibits 17 through 23, and ask you to look at those, and I ask you if you have seen those before.

A. I have.

Q. And on what date did you first see these exhibits?

A. On September 26, 1950.

Q. And you are referring to the date that is inscribed on the exhibit, Government's Exhibit 23?

A. That's right.

Q. And have these cartons been in the custody of 509 the FBI since that date?

A. They have.

Q. Now will you step down and look at the balance of these exhibits here, Government's Exhibits 1 through 53?

A. They are mixed up.

By Mr. Downing:

Q. Now, with respect to these exhibits, I ask you if you have seen those before.

A. I have.

Q. With respect to the contents of the exhibits in the court room, Government's Exhibits 1 through 53, I ask you if you know, with respect to the contents of each of those cartons, what, if anything, happened to the contents that were in the cartons.

Mr. Callaghan: I object unless he knows of his 510 own knowledge. Point out the source of his knowledge.

The Court: He asked if he knows.

By Mr. Downing:

Q. Do you have knowledge as to what happened to the contents of Government's Exhibits 1 through 53?

A. I do.

Q. What happened to the contents of those cartons?

A. They were taken from the cartons and turned over—

Mr. Callaghan: I object, if your Honor please, unless he did this that he is testifying to. "They were taken"—if this was done by someone else and this is hearsay, I object to him testifying to it.

The Court: Overruled.

By Mr. Downing:

Q. By whom was this done?

A. By a clerk of the Detroit office, in my presence, and they were later turned over to Mr. Videk of the Marine Adjustment Insurance Company upon the instructions of Mr. Vayo.

Mr. Callaghan: I move that he be stricken.

The Court: Motion denied.

By Mr. Downing:

Q. Approximately when did that happen, do you 511 recall, Mr. Scheer? Your best recollection?

A. I think that was sometime in December, but I wouldn't be positive of the date.

Q. And you handled the turning over of the contents of those cartons personally, did you?

A. I did.

Q. I show you Government's Exhibit 89 marked for identification, and I ask you to look at that and ask you if you have seen that before?

A. I have.

Q. With respect to that document, I ask you when you first saw it.

A. On July 28, 1950.

Q. Where were you at that time?

A. In the jewelry store of James Erwin Marshall at 157 West Nine Mile, Ferndale, Michigan.

Q. And with respect to that document, was it signed in your presence?

A. It was.

Q. Was it signed by James Irwin Marshall in your presence?

A. It was.

Q. With respect to the cartons described in that exhibit, did you see those cartons on that day?

512 A. I did.

Q. Are the cartons included in the group of cartons which I have shown you here in the court room? Were they the ones obtained from James Irwin Marshall on that date?

A. Those cartons mentioned here are a portion of those shown here.

Q. I show you a document which has been identified as Government's Exhibit for identification 78 and 83, each marked for identification, and I ask you to look at those and ask if you have seen them before?

A. I have.

Q. With respect to each of those documents, when did you first see them?

A. On August 28, 1950.

Q. From whom did you obtain them?

A. James Irwin Marshall.

Q. Where were you at that time?

A. In the FBI office in Detroit.

Q. Now, with respect to each of those exhibits, have they been in the custody of the FBI since that date?

A: They have.

Q. With respect to the white paper inclosed in each of the exhibits, by whom was that prepared?

513 A. By myself.

Q. Was that prepared at the time you obtained each of the exhibits inclosed in the respective envelopes?

A. It was.

Mr. Callaghan: That is objected to as immaterial. If he is trying to make competent a lot of testimony an FBI Agent has included in an envelope concerning some exhibit, I think we are wasting time, and I object to it.

The Court: The objection is overruled, and the answer will stand.

Mr. Downing: At this time, if your Honor please, the Government would like to offer in evidence Government's Exhibits 1 through 66, which are the group of cartons here in the court room, and Government's Exhibits 78, 86, and I again submit for your Honor's consideration Government's Exhibit 89, which has heretofore been withdrawn, and they may cross examine.

The Court: I suppose you had better cross examine before you object to the exhibits.

514

Cross Examination

By Mr. Callaghan:

Q. Mr. Scheer, which exhibits did you get from Mr. Swartz?

A. Well, roughly, that stack (indicating).

Q. Come down and tell us, unless Mr. Downing wishes to state—

Mr. Downing: Exhibits 54 through 65.

Mr. Callaghan: You are identifying now 54 through 65?

Mr. Downing: That's right.

By Mr. Callaghan:

Q. On what date did you obtain those from Swartz?

A. On the date inscribed thereon.

Q. What date is that? Have you any independent recollection of it at all?

A. No, I made the notation here of December 18, 1950.

Q. December 18?

A. Yes.

Q. 1950?

A. Yes.

Q. Is everything here now that you got from Swartz in December of 1950?

A. To the best of my recollection. To the best of 515 my recollection everything is there.

Cross Examination

By Mr. Walsh:

Q. I believe you testified there was a license plate on an automobile.

A. I did.

Q. What number?

A. EM-9645, Michigan 1950 license.

Q. Do I understand that there was one plate on the car, or two?

A. That was the rear plate. I didn't observe whether there was a front plate or not. I think in Michigan they don't have a front license.

Q. Well, do you know whether they have two plates?

A. I don't recall for sure.

Q. Did you look at the front plate of this car, or look to see if there was one?

A. I had no occasion to.

Q. You only checked the back plate?

A. That's right.

Mr. Walsh: I think that is all.

The Court: Is there any redirect?

Mr. Downing: No, your Honor.

The Court: That is all. You may step down.

(Witness excused.)

516 The Court: Objections, if any, to the proffered exhibits.

Mr. Callaghan: Your Honor has once sustained or indicated you would sustain an objection to Government's Exhibit 89.

The Court: I still don't see any need for putting it in the record. There is no use wasting time.

Mr. Downing: We will withdraw it then, your Honor.

Mr. Callaghan: That is what happened the last time it was offered.

So far as Exhibit 78 is concerned, may it please your Honor, your Honor also at the time the witness attempted to testify to the contents thereof, limited his examination to the figures appearing on the lefthand side. They are all in the record, and he testified to what he said appeared in this lower lefthand column, and your Honor sustained an objection to other than what appeared any place other than the lefthand side.

He testified to what is in the record, and he is covering it by putting additional records in—

517 Mr. Downing: It is corroborative of the testimony and part of the *res gestae*.

Mr. Callaghan: Your Honor sustained an objection to three-fourths of what is on that card.

Mr. Downing: Well, I disagree with that.

The Court: This is the one that Swartz testified to?

Mr. Callaghan: No, Mr. Marshall testified and you started to sustain an objection to the conversation and said that made the card incompetent.

Mr. Downing: No, he didn't say that.

Mr. Callaghan: Except for the figures appearing on the lefthand side. That is exactly what the court said. The record will show it.

The Court: I permitted Mr. Marshall to testify as to the notations he made hereon, and what they meant in so far as he was concerned, and I think that is sufficient. If it goes in now, as you say, it is merely corroborative of his testimony.

Mr. Downing: It is part of the *res gestae* and part of the transaction that took place on the 20th of July, 518 and as such I think the jury has a right to that document.

The Court: It is purely corroborative; don't you agree?

Mr. Downing: It is, but certainly—

The Court: It has no independent probative value other than to corroborate what he testified to.

For what other purpose did you want it in?

Mr. Downing: Of course, under the circumstances, your Honor, it seems to me that in view of the facts that exist, and in view of Marshall's testimony, he testified he got this from Swartz on the date indicated.

Mr. Callaghan: Now, he is going to get it in evidence, whether you admit it or not. He is going to tell the jury about it. I object to that.

Mr. Downing: And that on the 20th of July he came to Chicago and got this merchandise—

Mr. Callaghan: I object to counsel talking about the exhibit in front of the jury. I will point out what the evidence is.

The Court: Well, he can cover it in his closing argument, and I will let you do the same.

519 For what it is worth, I will receive it. I think it is corroborative, more or less.

Mr. Walsh: I object to its form, and it should be out of the cellophane envelope.

Mr. Downing: I will agree to that, I will take the white document out of it.

Mr. Callaghan: May I call your Honor's attention to how it came into the record?

The Court: I recall.

Mr. Callaghan: Marshall was testifying about a conversation he had, and when he got to that point of conversation that he had with Swartz an objection was made.

The Court: That's right.

Mr. Callaghan: Your Honor properly sustained the objection and said, "The writings on this card appear to be the result of a conversation. Except for the figures appearing in the lefthand column, I will sustain object to that document."

The Court: I allowed him to testify to the document.

Mr. Callaghan: On the lefthand side, yes, sir, the \$550, and you said, "The other figures are obviously the result of a conversation," and that you will sustain an objection.

520 The Court: I recall I didn't let him put in some testimony on the prices.

Mr. Walsh: Later the man testified he sold some of this stuff at certain prices, and that is the only thing that is in, but these figures are not in.

The Court: I recall that I allowed him to testify only to the number of boxes.

Mr. Downing: That is right.

The Court: And then he later testified to what he sold this merchandise for.

Mr. Downing: That is right, and the only objection at that time was with respect to a conversation Mr. Callaghan—

The Court: And I think it was proper.

Mr. Downing: Which I agreed with.

The Court: And it was out of the presence of these defendants.

Then in so far as that, if you can cut off that portion of it, that might be admissible.

Mr. Downing: I can blot out that portion.

The Court: Well, do you think it is important enough to put in? If you want to cut it apart and put that much in, I have no objection to your doing that, but the rest of it, I sustain, and I recall now in looking at my notes that I did sustain an objection to these prices going in. I don't see how they can get in now by putting in the card, and I wouldn't permit the witness to give them.

Mr. Downing: I shall be glad to blot out the prices.

The Court: If you can do that, you can put in the rest of the card. Let me see it after you do that. To that extent the objection is sustained.

Now, how about the next one?

Mr. Downing: That is 83.

Mr. Callaghan: Government's Exhibit 83 is a card or a piece of paper.

The Court: I think I saw that once before, didn't I?

Mr. Callaghan: I think so. It is a piece of paper Marshall said that he got from Mr. Swartz when he saw Gordon hand it to Swartz.

Mr. Downing: On the 2d of July.

The Court: Let me have it.

What are your objections?

Mr. Callaghan: There being no proof that document is in the handwriting of the defendant Gordon. I object to it on that ground. There was no special basis laid for its admission in evidence.

The Court: Do you object—

Mr. Callaghan: Pardon me. I object to the supporting data.

The Court: That is not offered?

Mr. Downing: No, I intend to take that supporting data out.

Mr. Walsh: I object to that document, being part of a transaction and conversation out of the presence of the defendant MacLeod between the witness or the defendant Gordon and Swartz, according to the testimony, but Mr. MacLeod was not present.

The Court: The objection is overruled. Government's Exhibit 83 will be received in evidence.

Remove the descriptive information.

(Whereupon said document, so offered and received in evidence, was marked Government Exhibit 83.)

The Court: As to the cartons, what have we, Government's Exhibit 1 through 66?

Mr. Walsh: I object to them as being immaterial 523 and irrelevant in the state of the record, as far as allowed.

Mr. Callaghan: That is the only basis of my objection, on the state of the record no sufficient foundation has been laid for their introduction.

The Court: ~~Both objections overruled~~, and the exhibit will be received in evidence.

(Whereupon said exhibits, so offered and received in evidence were marked, respectively, Government Exhibits 1 to 66, both inclusive.)

The Court: You may proceed.

Mr. Downing: Mr. Trainer.

Mr. Walsh: I want the record to note particularly that I object to those cartons which did contain files of the type described by Marshall as having been obtained on the 20th and 22d.

The Court: The record may show your further objection, which is likewise overruled.

524 CHARLES H. TRAINER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name?

A. Charles H. Trainer, T-r-a-i-n-e-r.

Q. What is your address?

A. Business address?

Q. Business address, yes.

A. 307 North Michigan.

Q. That is here in the City of Chicago?

A. That is right.

Q. What is your business or occupation?

A. I am manager for the Bell Building Corporation.

The Court: What corporation?

The Witness: Bell Building Corporation.

Mr. Downing: Keep your voice up so that the court and the members of the jury and the members at the table can hear you.

By Mr. Downing:

Q. How long have you been so engaged?

A. Since 1935.

525 Q. Just briefly, what is the nature of your duties?

A. Renting manager.

Q. In connection with your duties, are you acquainted with the property at 215 through 223 East Erie Street in Chicago, Illinois?

A. Yes, sir.

Q. Are you acquainted with the present lessee of that property?

A. I am.

Q. At the present time to whom is that property leased?

A. Kenneth MacLeod.

Q. Are you acquainted with Kenneth MacLeod?

A. I am.

Q. Will you look around the court room and see if Kenneth MacLeod is present there, please?

A. Right there (indicating).

Mr. Downing: Let the record show the witness has identified the defendant, Kenneth MacLeod.

The Court: It may so show.

By Mr. Downing:

Q. With respect to that lease, did you handle the leasing of that property yourself?

A. I was interested in it with one of the other employees at the office.

526 Q. Directing your attention to Government's Exhibits 84, 85, 86, 87 and 88, I ask you to look at each of those exhibits, and I ask you if you can recognize the property illustrated therein.

A. Yes, I do.

Q. I ask you if that is the property at 215 through 223 East Erie Street, in Chicago?

A. Yes, sir.

Q. And that is the property that you leased to the defendant Kenneth MacLeod, that you identified here in the court room, is that right?

A. Yes, sir.

Mr. Downing: You may cross examine.

Cross Examination

By Mr. Walsh:

Q. When did you make the lease, Mr. Trainer?

A. July 1, 1949, to rent for a period of five years.

Q. And it is still in effect?

A. That is right.

Q. And he still occupies the place as a lease?

A. That is right.

Mr. Walsh: That is all.

527 The Court: Do you have any questions, Mr. Callaghan?

Cross Examination

By Mr. Callaghan:

Q. These pictures show a good deal more than 215 East Erie Street, isn't that so?

A. More than 215?

Q. Mr. Downing asked you if these pictures truly represented the property at 215 East Erie Street.

Mr. Downing: I said 215 through 223, for the record.

The Court: That is correct.

By the Witness:

A. That is right.

By Mr. Callaghan:

Q. Do you know what the address is on the righthand side of the picture known as Government's Exhibit 88?

A. I don't know what that address is.

Q. That isn't part of the leased property, is it?

A. No, our building starts here (indicating), and this is the flat—

Q. By "starts here" you indicate a point to the left of the white building at the extreme left of the picture?

A. That is right.

528 Q. Now, the building on the lefthand side in about half of that picture on Government's Exhibit 85, isn't included in the leased premises, is it?

A. That's right, this is -21 and -23, and this is -15 and -17 (indicating).

Q. The building on the right is 215 to 217?

A. That's right.

Q. And the one on the left is—?

A. 221 to 223.—That is the residence, and this is a flat building, an eight-flat building, and a two- or three-story residence.

Mr. Walsh: May I ask another question, your Honor?

The Court: When he finishes.

Mr. Callaghan: I am through.

The Court: You may ask.

Cross Examination (Gtd.)

By Mr. Walsh:

Q. For what purpose was it leased, Mr. Trainer?

A. It was leased for a woman's hotel or a rooming house.

Q. How long has it been a woman's hotel?

A. For many years. It was formerly leased to the 529 Telephone Company, and later it was taken over by an individual who ran it until the time Mr. MacLeod purchased it from him.

Q. Since 1935 have you had charge of that particular building?

A. I have. That is, our office has.

The Court: Is there any redirect?

Mr. Downing: Just a couple of questions, your Honor.

Redirect Examination

By Mr. Downing:

Q. Mr. Trainer, you were shown Government's Exhibit 88. This portion of the property with the double garage door, is that in the property which is leased to the defendant MacLeod?

A. That is right, yes. That is a garage in the rear of the residence.

Q. And that is to the left of the white property that you indicated is not a part—

A. Yes, we have nothing to do with that.

Q. With respect to Government's Exhibit 87, that also illustrates the double garage door which is part of that property?

A. That is right, this is taken from the east, and 530 that from the west.

Q. And Government's Exhibit 85, that is a front view of the property which is leased to the defendant MacLeod, is that right, sir?

A. That's right.

Mr. Downing: That is all.

The Court: Any recross.

Recross Examination

By Mr. Callaghan:

Q. Mr. Downing has indicated to you a place where there is a double garage door, Mr. Witness.

The Court: Indicate the exhibit.

By Mr. Callaghan:

Q. (Continuing) On Government's Exhibit 88 for identification.

Mr. Downing: I said "double door garage", and not a "double garage door."

By Mr. Callaghan:

Q. You understand what I meant, didn't you, Mr. Witness?

A. Yes, there (indicating).

Q. And do you know who occupies that apartment?

A. No, I do not.

531 Q. Does the occupant of that apartment have ingress and egress by means of the garage?

A. I don't know. That is a lease made by Mr. MacLeod to the tenant. He rents the entire property and—

Mr. Callaghan: All right. That is all.

Mr. Downing: That is all.

The Court: Step down.

(Witness excused.)

532 A. D. MEHEGAN, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. A. D. Mehegan.

Q. What is your business or occupation, Mr. Mehegan?

A. Special Agent, Federal Bureau of Investigation.

Q. How long have you been so employed?

A. More than 25 years.

Q. At what office are you stationed at?

A. Chicago.

Mr. Downing: May we have a stipulation that the witness can identify the witness Gordon in the court room?

Mr. Callaghan: Oh, sure.

By Mr. Downing:

Q. Now, directing your attention to November 29, 1950, did you have occasion to have a conversation with the defendant Gordon?

A. I did.

The Court: What date?

Mr. Downing: November 29, 1950.

533 By Mr Downing:

Q. Who else was present at that time?

A. Agent McCormick of the Chicago office.

Q. Agent McCormick is sitting there in the court room, is that right, sir?

A. That is right.

Q. Where did you have the conversation?

A. That was in the back of the store of Gordon, at 21 East Adams.

Q. Here in Chicago?

A. Here in Chicago.

Q. Anyone else present besides Special Agent McCormick, defendant Gordon, and yourself?

A. There was other persons in the store. I do not know who they were.

Q. All right. Will you relate the conversation as to what was said at that time?

A. McCormick and myself were in the store. It was about late afternoon, November 29th. There was displayed to Gordon this piece of paper here, one of the Government's exhibits.

Q. By that you are referring to Government's exhibit 83, in evidence?

A. That is right.

534 Gordon was asked whether or not he had any interest in 215 East Erie Street.

He said he did.

What was the place used for?

That is rented to young ladies and girls.

How many are in the place.

He says there is about 100 there now.

What are the gross receipts from the rental of that place?

Oh, \$650 a month.

Mr. Callaghan: I object to all this as being immaterial and having nothing to do with this lawsuit.

Mr. Downing: It shows the relationship between the defendant and defendant MacLeod with respect to the prop-

erty at 215 East Erie Street, in which property some of the contents of the articles were found and is part of the res gestae in this case.

The Court: For that purpose I will let him proceed.

By the Witness:

A. He explained what the profit was.

Mr. Callaghan: He said.

535 The Court: The substance of what he said.

Mr. Callaghan: I object.

The Court: Sustained.

By Mr. Downing:

Q. Will you describe what was said and who said it?

A. He said the profits were about \$400 a month, which he divided between himself and others.

He was asked whether or not he ever had any occasion to write a note to 215 East Erie Street, such as you have in the Government's exhibit.

Mr. Callaghan: I submit, if your Honor please, that he tell us what was said and not he was asked, and such as that.

The Court: Give us the substance of the conversation, what you said and he said.

By the Witness:

A. He said he had occasion to write a note such as 215 East Erie Street with "10" on it, for the purpose of directing tenants and others, who might go to this particular address.

He also said he had in this particular address a counter, he had some merchandise, he had for sale there.

I wanted to know whether he signed this note.

536 He said he didn't think he did, but if he did it would have been signed prior to 1946, when, at that time, the Liberal Loan Bank name was used for the store over there.

The reverse of this read, said, "Liberal Loan Bank."

About this time there was discovered on the floor by Mr. McCormick also right at our feet another piece of paper.

That piece of paper—

By Mr. Downing:

Q. Is this the piece of paper?

A. It was torn. That was it.

Q. Identified as Government's exhibit 91?

A. That is the piece of paper here.

Q. No. 91?

A. No. 91. That is the paper. Gordon was asked what it was.

He said a portion of a scratch pad we got in our business and the name Liberal Bank on it.

Mr. Walsh: I object to this conversation out of the presence of the defendant, and it is not part of the *res gestae*. I do not see how it could be admitted.

The Court: That will be included in an appropriate 537 instruction, as I have indicated heretofore.

By Mr. Downing:

Q. Continue, Mr. Mehegan, please.

A. So, Gordon says, "Yes, we have some of these pads in use right now. You will find some up in the front of the store, a few of them left, we use them once in a while for memorandums and scratch pads."

Q. Are these pads you refer to the type illustrated by Government's exhibit 91?

A. Yes.

Mr. Callaghan: I object to him referring to something similar, making comparisons on which we cannot cross examine him.

The Court: The question and answer may stand.

By Mr. Downing:

Q. Continue, Mr. Mehegan?

A. Then we go back to 1946.

I said to Gordon, "You say that these were not used since 1946?"

He said, "Well, this particular piece of paper here has been used since 1946."

Now, we asked Gordon whether or not he would give us some of his handwriting specimen.

He said, "No," that he did not want to do that. He 538 said if we were interested in that we could call around to his bank and get some hand specimens there of his bank account.

We asked him what bank it was.

He said the City National Bank.

That substantially concluded the conversation.

Q. Directing your attention to Government's exhibit 91, I ask you, has that been in the files of the FBI since the date that you obtained it on November 29, 1950?

A. It has.

Q. I ask you, did you place your initials on that document?

A. My name is on here, "Mehegan."

Q. On what date did you affix your name to that document?

A. On the 29th of November, 1950.

Mr. Downing: At this time, if your Honor please, the Government would like to offer in evidence Government's exhibit 91. They may cross examine.

The Court: I will hear you on the exhibit after cross examination.

Cross Examination

By Mr. Callaghan:

539 Q. Mr. Mehegan, did you see the words "Liberal Loan Bank" on the window there?

A. Yes.

Q. Liberal Loan Bank?

A. Yes.

Q. On the window?

A. In November it was on the window. My recollection, it was on the window. It was also on a post as you enter in that store.

Q. And you saw that in a neon sign in that window?

A. I don't remember of any neon sign being there.

Q. Where else did you see the name "Liberal Bank" displayed in that store?

A. That is the only place I have a recollection. I don't remember seeing it inside the store.

Q. How many times were you in that store?

A. One time.

Q. How many times did you talk to the defendant Gordon?

A. That was the only time.

Q. That you have ever talked to him?

A. That is right.

Q. What time of day was it?

A. Late in the afternoon, probably 4:30.

Q. Where did you talk to him, by the way?

A. In his—in the rear of his store at 21 East.

540 Q. In the back room?

A. I would call it a back room.

Q. How big is that back room, by the way?

A. Well, just would be the store?

Q. Just answer the question, please, the size of the back room.

Mr. Downing: Now let him answer the question.

Mr. Callaghan: No, I want him to answer the question.

Mr. Downing: He asked him to answer the question.

The Court: Proceed with your answer.

By the Witness:

A. The back room, to my recollection, is probably 15' long to the rear wall, and perhaps 8 or 9' wide.

Q. How big is the outside room, then, known as the store proper?

A. Where the customers come?

Q. Yes.

A. Where the customer comes, that is the gross area, that is about 25' feet wide and probably 27, 28' long to the cage where the Cashier has a place there.

Q. This store is all on one floor in those two rooms, isn't it?

541 A. Yes, it is on one floor.

Q. As you come in the store, are there jewelry cases you see?

A. Yes, you come in the store through double swinging doors, enters on an angle, and you see— By the way, the front of the store is on the south side of the street facing north. As you come in, there is a counter on your left-hand side. There is one on your head here and one on the right-hand side.

Q. What is displayed in those counters?

A. I don't know, watches, diamonds,

Q. Watches and rings and diamonds?

A. Watches and rings and diamonds.

Q. You didn't see old guitars, mandolins, old suite of clothes hanging around?

A. No.

Q. Any shotguns or anything of the kind, to indicate that was a pawn shop? You know now it is not a pawn shop?

A. It never was a pawn shop here that I know of.

Q. Everybody has been referring to it as the Liberal Loan Company. You know this is the loan company?

A. I don't know what their business is. I am only telling you that is what it was.

542 Q. Did somebody say that you called the Liberal

Loan Company, Liberal Jewelry?

A. It is the Liberal Jewelers now. It was Liberal Loan Bank then.

Q. In 1950 it was the Liberal Loan Bank?

A. I am certain it was the Liberal Loan Bank.

Q. You are sure about that?

A. I am certain.

Q. You told us all the conversations you ever had with the defendant Gordon?

A. That is all the conversation I remember, yes.

Mr. Callaghan: That is all.

The Court: Do you have any questions?

Mr. Walsh: Except to renew my objection.

The Court: Yes, which I will take care of in an appropriate instruction when I instruct the jury.

Mr. Downing: No redirect, your Honor.

(Witness excused.)

Mr. Downing: May I have a ruling on 91?

The Court: Objections, if any, to exhibit 91, Mr. Callaghan?

Mr. Callaghan: I object to the supporting data 543 which appears on both of these exhibits. This one, by the way, by this one I mean Government's exhibit 91. The supporting data is right on the face of the document itself.

The Court: Them, I have ordered those removed.

Mr. Callaghan: On this one, too?

The Court: Yes. I was going to take that up before it goes to the jury and leave in the envelope only the exhibit itself.

Mr. Downing: That is right.

Mr. Callaghan: I submit on the state of the record, if your Honor please, there is not sufficient foundation laid for this document.

Mr. Downing: 83 in in.

Mr. Callaghan: I thought you were reoffering it.

Mr. Downing: No, I am only offering 91.

The Court: Any objections to 91?

Mr. Callaghan: The only objection is that supporting data, how that fixes their time, dates, and the place and all that sort of thing that the agent put on these things to refresh his recollection.

The Court: Overruled. The exhibit will be received in evidence.

544 (Which said document so offered and received in evidence, was marked Government's Exhibit 91.)

Mr. Downing: Mr. McCormick.

WILLIAM J. McCORMICK, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. State your name, please?

A. William J. McCormick.

Q. What is your business or occupation, Mr. McCormick?

A. I am Special Agent with the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. Approximately ten and a half years.

Q. At what office are you now stationed?

A. Chicago.

Mr. Downing: May we have a stipulation he can identify the defendants Gordon and MacLeod in the court room?

Mr. Walsh: I do not stipulate.

545 By Mr. Downing:

Q. Are you acquainted with the defendants MacLeod and Gordon?

A. I am.

Q. Approximately how long have you known each of them?

A. I have known Gordon approximately two or three years, and MacLeod since last November, 1950.

Q. Will you point them out in the court room, please?

A. Mr. Gordon is sitting second man from the end, and Mr. MacLeod is on the end.

Mr. Downing: Let the record show that the witness has identified the defendants Gordon and MacLeod in the court room.

By Mr. Downing:

Q. Directing your attention to November 8, 1950, did you have a conversation with the defendant Gordon?

A. I did.

Q. Who else was present at that time?

A. Special Agent Frank J. Stefanak and myself,

Q. Where did you have this conversation?

A. In Room 2000 Bankers Building, 105 W. Adams St., Chicago.

A. Is that part of the office of the Chicago Branch of the FBI?

546 A. It is.

Q. Will you relate the conversation?

A. At that time I asked Gordon where he lived and he told me he lived at 515 West Roscoe St.

Q. Yes.

A. I asked him what business he was in.

He said he had the jewelry store at 21 West Adams Street, in Chicago; that he also had half interest in the rooming house at 215-217 East Erie St., in Chicago.

He said he was in partnership in the rooming house with Kenneth MacLeod.

Mr. Walsh: The defendant MacLeod objects to this conversation as being after any dates mentioned in the indictment and not part of the res gestae and out of the presence of the defendant MacLeod.

The Court: Yes. The conversation, of course, does not go into evidence as against the defendant MacLeod. As I told you before, we will give an appropriate instruction at the right time.

By Mr. Downing:

Q. Continue.

547 A. He told me that the incomes from the property at 215 East Erie St.—

Mr. Callaghan: Objected to as being immaterial, if your Honor please, and nothing to do with this lawsuit.

The Court: Overruled on the same grounds I overruled the objection with reference to Mehegan.

By the Witness:

A. He told me that the net profits per month were approximately \$500, which was split between himself and MacLeod.

I asked him if he knew James Irwin Marshall. I showed him a photograph. He said he did not, and had never seen that man.

Mr. Callaghan: I submit, if your Honor please, that photograph ought to be introduced in connection with that conversation.

The Court: Do you have it?

Mr. Downing: I do not have it.

The Witness: I do not have it with me.

The Court: You may proceed.

By the Witness:

A. I asked him if he knew Albert Swartz from Detroit..

548 He said he did, that he had sold him jewelry.

I asked him if he had ever sold Swartz or Marshall any film.

He said he had not. He said he was not in the film business; that he had never bought or sold any quantity of film; that the only film that he had ever had was film that he had used himself.

I asked him if, in July of 1950, there had been any film at 215 to 217 East Erie Street.

He said there had not, to his knowledge.

I asked him if the garage in the rear of 217 East Erie Street was a part of the premises that he and MacLeod leased.

He said it was.

And I asked him if there was any film in the garage.

He said not to his knowledge.

By Mr. Walsh:

Q. Was your question directed to whether there was any on November 8th?

A. In July, July of 1950.

I specifically asked him if there were any film in the garage or in the place at 215 to 217 East Erie Street on July 18th or on July 27th.

549 He said that there was not, as far as he knew.

I asked him how long he had known Kenneth MacLeod.

He said he had known him for several years; that MacLeod was his superior officer in the army.

At that time Agent Stefanek asked Gordon to tell us all about the film that had been in the garage in July of 1950.

At that point Gordon said if he told us everyone he had sold stolen merchandise to in the City of Chicago it would involve a great many people.

Mr. Callaghan: Your Honor, I move, that remark having been made, that a mistrial be declared of this lawsuit and the jurors be withdrawn.

Mr. Walsh: I make the same motion on behalf of the defendant MacLeod.

The Court: Motion denied.

By Mr. Downing:

Q. Do you recall anything else that was said at that time?

A. That is all I recall.

Q. At that time was there any statement signed by the defendant Gordon?

A. There was not.

550 Q. Was he requested to sign any statement?

A. No, he was not.

Q. Thereafter, did you have any other conversation with the defendant Gordon?

A. Yes, I did.

Q. When did that conversation take place?

A. On November 29, 1950.

Q. Where did that conversation take place?

A. In his store at 21 West Adams Street, or East Adams Street.

Q. When you said "West Adams" originally, did you mean East Adams or West Adams?

A. I meant the Liberal Loan Jewelry Shop at 21 East Adams.

Q. Who else was present at that time?

A. Special Agent A. D. Mehegan, Gordon, and myself.

Q. Will you relate the conversation as best you can recall it?

A. On that day, Agent Mehegan and myself went to the store after Gordon. I had called Gordon on the telephone. He had invited us over. I told him we wanted to talk to him.

So we went over to the store. --He took us into the back room and I showed him a slip of paper bearing
551 the pencilled notation "Ken 215 East Erie Street."

Q. By that you are referring to Government's exhibit 83 in evidence?

A. I am.

Q. All right.

A. I showed him this Government's exhibit 83 and asked him if he had written that.

He looked at it. He said he didn't believe that he had, but that he couldn't be certain as to whether that was his handwriting or not.

He looked at the reverse side of it, and said, "This bears

the name 'Liberal Loan Bank, 21 East Adams Street'. Since 1946 we have not used that name. The name is now Liberal Loan Jewelers. If I did write it, I must have written it before 1946."

I again asked him if he was certain he had not written it.

He said he was not.

I asked him to give us specimens of his handwriting so that we could make a comparison.

He declined to do so.

Special Agent Mehegan then asked him about his ownership or interest in the place at 215 East Erie St., and he told us that he and Kenneth MacLeod jointly held 552 a lease on those premises.

He said that he sold certain merchandise, costume jewelry and nylons to the tenants of the building; that in connection with that he maintained a counter, display counter, up at 215 East Erie Street, and that he had in the past written notes similar to this, sending prospective tenants up to 215 East Erie Street.

At that point I observed on the floor a scrap of paper which appeared to be, have the identical words "Liberal Bank" on it. I picked it up. Showed it to him and asked him if that were not the same name as appeared on Government's exhibit 83.

He said it was. He said he then recalled that they still did use some of these letterheads "Liberal Loan Bank" for scratch pads and that they had several around the store at that time.

553 Q. On this slip of paper are you referring to Government's Exhibit 91 in evidence?

A. I am.

Q. Do you recall anything else that was said at that time?

A. We again asked him for specimens of his handwriting, and he told us that he didn't care to give it to us, and that if we wanted any we could find them for ourselves, that his bank was the City National Bank.

That is all I recall.

Q. All right.

With respect to Government's Exhibit 91 in evidence, did you affix your initials thereto?

A. I did.

Q. Were those initials affixed thereto on or about November 29, 1950?

A. They were.

Q. Now, have you had a conversation with the defendant MacLeod?

A. I have.

Q. Approximately when did you have a conversation with the defendant MacLeod?

A. I believe that was November 11—November 9, 1950.

Q. Where were you at that time?

554 A. I was at Room 2000 in the Bankers Building.

Q. Who else was present at that time?

A. Special Agent Higgs, Walter Higgs.

Q. Now will you relate the conversation that you had with the defendant MacLeod at that time and place?

A. At that time we asked—Higgs asked MacLeod what was his occupation, and he said that he was the operator, with Kenneth Gordon, of the rooming house at 215-217 East Erie Street.

We asked him where he lived, and he said he lived at 1150 North Lake Shore Drive.

We asked him about the lease on the premises at 215-217 East Erie Street, and he said that the lease was in his name, but that he and Kenneth Gordon were in partnership in the operation of the rooming house at that address.

He stated that he actively managed the building, and that he was there at least once a day in connection with the management of the premises.

We asked him about the garage in the rear of 217 East Erie Street, and he said that that was a part of the premises covered by his lease.

We asked him if he occupied that garage, and he said 555 that he did except during the month of July, 1950, he

had rented the garage for \$20 to some individual whose name he did not know, and who had parked a truck in there for several weeks, and then later disappeared without contacting him or cancelling the rental agreement, or paying him any money.

He said, however, that he had access to that garage at all times.

We asked him if he dealt in Eastman film, and he said he did not, that he had never bought or sold any Eastman film.

We asked him if he knew James Irwin Marshall, or Albert Swantz, from Detroit, and he said that he did not, that he had never heard of either gentleman, and was unable to—he was shown a picture of Marshall—

Mr. Walsh: I object to that unless we have the picture.

The Court: Objection overruled.

Do you have the picture with you?

The Witness: I do not.

The Court: You may proceed.

By the Witness:

A. (Continuing) He stated he had never seen Marshall.

I asked him if, on July 27, there had been any film 556 in the garage at 217 East Erie Street, and he said that

there had not, and I asked him if he would have known had there been, and he said that he would have, and I asked him if, on July 27, 1950, he hadn't loaded any film from the garage into a car bearing a Michigan license, a Buick automobile, and he said he had not.

I asked him if he had loaded any film in any car from that garage or any place on the premises at 215 East Erie Street, and he said he had never done so, that to his knowledge there had never been any film in the garage or on the premises at that address.

Q. Do you recall anything else that was said at that time?

A. I don't recall.

Q. At that time did the defendant MacLeod sign a statement?

A. He did not.

Q. Was he requested to sign a statement?

Mr. Callaghan: That is objected to, if your Honor please.

The Court: Overruled. He may answer.

By the Witness:

A. He was not.

Mr. Downing: You may cross examine.

557 The Court: Who wants to cross examine first?

Mr. Callaghan: Before the cross examination begins, may it please your Honor, I move now to strike the remark upon which I move the court to grant a mistrial, and I ask the court not only to strike it, but to instruct the jury to disregard that portion of the witness' testimony.

The Court: The motion is denied.

Cross Examination

By Mr. Callaghan:

Q. How many conversations have you had with the defendant Gordon?

A. Two in person, and one on the telephone, that I recall.

Q. You testified here to the two conversations that you had with him, is that so?

A. I have.

Q. Now, who was present at the first conversation?

A. Special Agent Frank Stefanak and myself.

Q. Where is Stefanak now, by the way?

A. He is in Chicago. I don't know exactly where he is at the moment.

558 Q. And you were about to name someone else, were you?

A. During the conversation on November 8, Special Agent Robert Walters was present—not during my conversation, but he was in the room for, I would say, approximately a half hour.

Q. Did you record this conversation?

A. I did not.

Q. Did you make any transcription of it at all, by a stenographer, or anybody?

A. I did not.

Q. Did you transcribe it out when you concluded the conversation, and ask Mr. Gordon to sign it?

A. No, I made notes at the time of the interview.

Q. When did you last see those notes?

A. I saw those notes this morning.

Q. You read them very carefully before you took the witness stand, didn't you?

A. Yes, I did.

Q. Now, with whom did you discuss your evidence before you took the witness stand?

A. I have discussed the case with United States Attorney Downing.

Q. When did you last talk to Mr. Downing about your testimony?

559 A. Oh, I think it was last Friday or Saturday.

Q. Did you talk to him this morning after you read your notes?

A. No, I didn't discuss my testimony with him this morning at all.

Q. Now, what was the date of the second conversation?

A. November 29, 1950.

Q. And that took place where?

A. In the store at 21 East Adams Street.

Q. That is the conversation at which Mr. Mehegan was present?

A. That is right.

Q. By the way, you sat in this court room all the while Mehegan testified and heard the entire testimony, didn't you?

A. I did.

Q. Did you and Mr. Mehegan compare your notes this morning?

A. No, we did not.

Q. Did you let Mehegan read your notes?

A. No, I did not.

Q. Did you read his notes?

A. I read his notes.

Q. When did you last read his notes?

560 A. I think I read his notes sometime last week.

Q. Since this trial has begun?

A. Yes, sir.

Q. When did you last discuss your testimony with him?

A. With Mehegan?

Q. Yes.

A. Sometime last week.

Q. Did you tell him what you expected to testify to?

A. No, we had a very general discussion.

Q. General to the extent where you told each other what each of you were going to testify to?

A. No, we read his notes, and that was about the extent of the testimony.

Q. But you didn't read yours; just his?

A. I didn't make any notes at that time.

Q. Sir?

A. I made no notes on the conversation we had on November—

Mr. Downing: Let him finish the answer.

Mr. Callaghan: He finished his answer.

The Court: No, he had not.

Mr. Callaghan: I beg your pardon.

By Mr. Callaghan:

Q. Do you want to say something else?

561 A. I say that on the interview of November 29, I made no notes.

Mr. Callaghan: Miss Reporter, you had that answer before?

The Court: And you started to ask a question before he finished?

Now, don't do that any more.

Mr. Callaghan: If your Honor please, I respectfully submit that the record will show that the answer is completely finished before I asked another question.

The Court: I made my ruling. Ask another question.

By Mr. Callaghan:

Q. Were Mehegan's notes typewriting or in longhand?

A. They were in longhand.

Q. Where did you examine those notes?

A. In our office at Room 2000, Bankers Building.

Q. Now, you have no independent recollection of that, until after you looked at Mehegan's notes?

A. I have a very vivid recollection.

Q. Of the entire conversation?

A. The entire conversation.

Q. But yet you spent how long looking at Mr. Mehegan's notes?

A. Probably four or five minutes.

Q. How long in conversation with Mehegan about it?

A. Oh, maybe five minutes.

Q. And how long with Mr. Downing discussing it?

A. You mean last week?

Q. Whenever you discussed it with him.

A. I discussed it with him probably, on, fifteen or twenty minutes.

Q. How long did you discuss it with him since this trial was begun?

A. Maybe five minutes; not any longer.

Q. Now, where did you get the picture of Marshall?

A. I received that from our Detroit office in the mail.

Q. Did you try getting a picture from the Police Department in Chicago?

Mr. Downing: Objection, your Honor. That is immaterial.

The Court: Sustained. He said where he got the one he showed him.

By Mr. Callaghan:

Q. When did you last see that picture?

A. I think it was probably last November, November 29. I don't recall seeing it—

Q. Was it a day or two before you talked to Gordon that you received that picture from your Detroit office?

A. I don't recall when I received it.

Q. Well, could you give us your best estimate of what month? Was it during July you received it?

Mr. Downing: Objection: The question is "What month during July?"

Mr. Callaghan: I mean "What month during 1950?" obviously. That is silly.

Mr. Downing: I object to that.

The Court: State when you received it.

By the Witness:

A. I don't recall exactly. I think it was sometime in August of 1950.

By Mr. Callaghan:

Q. Are you sure you didn't get that picture of Mr. Marshall sometime during the month of July, 1950?

A. I am not sure. I don't remember when it was. I think it was August.

Q. Now, did you have more than one picture of Marshall?

A. I believe there were several pictures. I don't know whether there were different poses or not.

Q. How many pictures did you show Gordon?

564 A. I showed him either one or two.

Q. You are not sure about that, whether it was one or two?

A. No, I am not.

Q. You are not even sure whether you had more than one, are you?

A. I am only sure that I had a picture of Marshall, which I showed to him.

Q. How was he dressed in the picture?

A. I don't recall.

Q. Did he have a hat on?

A. No, I don't believe so.

Q. Did he have on glasses?

A. I don't think so. I don't recall.

Q. You don't remember anything at all about his dress or the appearance of that picture?

A. I recall that I had a picture of Marshall that I showed to Gordon. I don't remember now how he was dressed, or whether he wore glasses.

Q. When did you last see that picture?

A. I think probably the last time I examined it was on that date, November 8, 1950.

Q. Do you know what you did with it then, Mr. McCormick?

A. It is in our file.

565 Q. In the Chicago office?

A. Either in the Chicago office or it has been returned to Detroit.

Mr. Callaghan: That is all.

The Court: Any questions, Mr. Walsh?

Mr. Walsh: Yes.

Cross Examination

By Mr. Walsh:

Q. Mr. McCormick, you talked to Mr. MacLeod at 215 East Erie Street that day, did you not?

A. On the same day, yes.

Q. November 8, 1950?

A. November 8, yes.

Q. Before you took him down to the FBI office?

A. That is right.

Q. And I assume you told him that anything he said might be used against him.

A. He was advised that he was entitled to an attorney, and that he didn't have to say anything.

Q. And were you alone up at 215 East Erie?

A. No, I was not.

Q. Was Agent Higgs with you?

A. Agent Higgs was with me.

566 Q. And were there many other Agents with him?

A. I believe there were two other Agents.

Q. Now, when you came down to Room 2000 in the FBI Building, or the Bankers Building over here, are you sure that only you and Agent Higgs were present?

A. No, Higgs and I conducted the interview. Special Agent Stefanak was present for part of the interview, and Special Agent Williams was—came in the room, I recall.

Q. Were there any other Agents present?

A. Those are the only two, other than Higgs and myself.

Q. Were there any stenographers?

A. No.

Q. Were there any stenographers over a partition or place where they could record this?

A. No, sir.

Q. Were there any mechanical contrivances to record it?

A. No, sir.

Q. Were you making notes as you talked to him?

A. Agent Higgs made notes of that interview.

Q. Now, as a matter of fact, didn't you say to him 567 at one time during that conversation—didn't you say these words, in fact:

"What is the matter, don't you even want to talk about the weather?"

A. I don't recall making that statement. I may have.

Q. Do you recall any Agent having said that to him?

A. No, I don't.

Q. Don't you recall, as a matter of fact, that he refused to answer any questions regarding the garage until he had seen his attorney?

A. No, sir.

Q. Now, what was the business conducted at 215 East Erie Street when you were there?

A. When I was there?

Q. Yes.

A. Special Agent Higgs—

Q. No. What business was going on there, being conducted there as part of the premises?

A. I don't know. It appeared to be a rooming house.

Q. Did you see a desk with pigeonholes for mail there?

A. I don't recall that.

Q. You wouldn't deny that there was one there?

A. No, there may have been.

Q. Now, did you show this picture of Marshall to 568 MacLeod, or was it done by another Agent?

A. I think Agent Higgs showed a picture of Marshall to MacLeod; I showed it to Gordon.

Q. And if you told us on direct examination that you showed it to him, you were incorrect to that extent?

A. I showed the picture to Gordon. I conducted the interview of Gordon, and Higgs conducted the interview of MacLeod, and I was present.

Q. As a matter of fact, nobody showed a picture of Marshall to MacLeod, isn't that the truth?

A. Agent Higgs showed a picture to him.

Q. Are you positive of that?

A. Positive.

Q. What time was it?

A. What time of day? It was about 11:45.

Q. How long was he there at your office?

A. From about 11:30 until 2:00 o'clock.

Q. Did you show him Swartz's picture?

A. No.

Q. Did anyone?

A. No.

Q. Now, when you were at 215 East Erie, you saw some lons there, didn't you, in a case?

A. I saw some boxes of nylons there.

Q. As a matter of fact, you took one, didn't you?

569 A. No, I didn't.

Q. Did some other Agent with you take one?

A. I believe so, yes.

Q. Did he leave any money for it?

A. I don't know whether he did.

Q. Did he give him a receipt for it?

A. I don't know.

Q. Has he ever returned it, to your knowledge?

A. I don't know.

Q. Now, one other point I want to straighten out.

You have been an Agent for how long?

A. Ten and a half years, since 1940.

Q. Before you entered on your immediate duties as an Agent, I assume you went to the FBI training school, did you not?

A. I did.

Q. And while there you were trained for a while as a witness, were you not?

A. No. No, I was not.

Q. Did you ever take part in mock trials or witness trials—

Mr. Downing: Objection, your Honor. This is immaterial.

The Court: Sustained.

570 Mr. Walsh: I want to show this man is an experienced person, trained in the law, and trained in

testifying, so that the remark he made on direct, to which we objected strenuously, was calculated.

Mr. Downing: I object.

The Court: The objection is sustained.

By Mr. Walsh:

Q. Well, now, you didn't prepare a statement and ask Mr. MacLeod to sign it?

A. No, I did not.

Q. Why not? Because you considered it unsatisfactory?

Mr. Downing: Objection as to why he didn't. That is immaterial.

The Court: Sustained.

By Mr. Walsh:

Q. Of course you gave him no copy of Agent Higgs' notes regarding that?

A. No.

Q. Have you examined Agent Higgs' notes?

A. Yes, sir.

Q. When?

A. I think it was Saturday.

Q. Prior to that?

571 A. I don't recall ever having looked at his notes before.

Q. Did you ever see any report that he had written from those notes?

A. Yes, I did.

Q. Well, are you the Agent in charge of assembling this case?

Mr. Downing: Objection. That is immaterial, your Honor.

The Court: Sustained.

Mr. Walsh: I want to show the special interest of the witness.

The Court: I sustain the objection.

Mr. Walsh: That is all.

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

Before Judge Campbell and a Jury.

Monday, June 4, 1951,

2:00 o'clock p.m.

Court met pursuant to recess.

574 The Court: You may proceed.

Mr. Downing: Mr. Higgs.

WALTER M. HIGGS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. Walter M. Higgs, Jr.

The Court: Walter is the first name?

The Witness: Walter M. Higgs, H-i-g-g-s, Jr.

The Court: All right.

By Mr. Downing:

Q. What is your business or occupation?

A. Special Agent of the Federal Bureau of Investigation.

Q. How long have you been so employed?

A. About three years.

Q. At what office are you stationed?

A. Chicago, Illinois.

Q. And were you stationed at the Chicago office in July of 1950?

575 A. Yes, I was.

Q. Are you acquainted with the defendants Gordon and MacLeod on this matter?

A. Yes, I am.

Q. If you see them in the court room, will you point them out, please?

A. Mr. Kenneth Gordon seated there in the light suit (indicating), and Mr. MacLeod on the end there (indicating).

Mr. Downing: Let the record show that the witness identified the defendants Gordon and MacLeod in the court room.

By Mr. Downing:

Q. Directing your attention to Government's Exhibit 68 and 69, each marked for identification, I ask you to look at those, and I ask you if you have seen them before, please.

A. Yes, sir, I have.

Q. When did you first see those exhibits?

A. This exhibit marked 68 I first saw on the morning of July 11, 1950.

Q. Where were you at that time?

A. I was at the Interstate Motor Freight System, 1833 South Canal, Chicago, Illinois.

Q. Who, if anyone, gave that to you at that time?

576 A. This seal is No. 26894, and was given me by Mr. McGrath, the dispatcher at the Interstate Motor Freight System.

Q. And have you had that in your custody since that date?

A. Yes, I have.

Q. With respect to Exhibit 69, when did you first see that?

A. This seal is Exhibit No. 69, is Eastman Kodak seal 26895, the seal which I found.

Mr. Callaghan: I submit the witness was only asked when he last saw it.

The Court: Yes. Answer the question.

By Mr. Downing:

Q. When did you first see the exhibit?

A. I first saw this exhibit on the morning of July 11, 1950.

Q. And where were you at that time?

A. I was at the Interstate Motor Freight System, Interstate Motor Freight Trucking lot at 1833 South Canal, and I found this seal myself.

Q. Whereabouts on the property did you find that seal?

A. On the southeast corner of the parking lot.

Q. Who, if anyone, was with you at that time?

577 A. Mr. McGrath, the dispatcher of the Interstate Motor Freight System, was with me.

Q. Has that seal been in the custody of the FBI since that date?

A. Yes, sir, it has.

Q. Directing your attention to July 27, 1950, approximately 1:00 p.m., were you on duty at that time?

A. Yes, sir, I was.

Q. Where were you at that time?

A. About 1:00 p.m. on July 27 I was at the "Popular Mechanics," 200 East Ontario, on the third floor men's washroom.

Q. Is that in the City of Chicago?

A. Chicago, Illinois.

Q. Are you acquainted with 215 East Erie Street in Chicago?

A. Yes, sir, I am.

Q. Where is 215 East Erie Street in relationship to where you were, as you testified, at 200 East Ontario?

A. The building at 215 East Erie Street, the rear of that building is about forty or fifty feet from where I was stationed on that day.

Q. From where you were stationed at that time, what portion of the property at 215 East Erie Street could 578 you see?

A. I could see the entire west wall, and the entire south wall, which is the back of the building.

Q. Are you acquainted with the large double door at the rear of the property at 215 East Erie Street?

A. Yes, I am.

Q. Could you see that from where you were stationed?

A. Perfectly.

Q. About how far were you from that door?

A. Between 100 and 150 feet.

Q. Will you relate to the court and jury what you witnessed, if anything, at that time and place, with respect to the property at 215 to 217 East Erie Street, Chicago?

A. It was about 1:00 p.m. on July 27, 1950, when a 1950 Buick Riviera, with a bluish gray body and a dark blue top pulled into the alley beside 215 East Erie Street, and stopped a few feet inside of the alley, and a young man, the driver of the automobile, got out of the car and went to the front of the building, at 215 East Erie Street, and he wasn't gone perhaps more than a minute or two minutes at the most, and he returned, followed immediately by Mr. Kenneth MacLeod.

Q. That is the defendant MacLeod here in the court room?

A. Yes, Mr. MacLeod there (indicating).

The driver of the car got back in his car and pulled it on around in the alley, the alley being an L-shaped alley, he pulled around 215 East Erie at the rear, and left the car facing east just before the large garage door and Mr. MacLeod proceeded to the large garage door with the key, unlocked the lock, and opened the door, and I believe Mr. MacLeod made a few gestures to Mr. Marshall at that time—he was the driver of the car—he got out and Mr. Marshall and Mr. MacLeod went in the garage and perhaps they were in there a couple of moments, and then Mr. MacLeod drove the truck that was in that garage out into the alley, and Marshall backed his car into the garage, and the passenger in the car stood in the alley while the car was being backed into the garage.

Q. Have you identified, since that date, the two men that were in this Buick at that time?

A. Yes, I have.

Q. And who were those two men?

Mr. Callaghan: I object to that, if your Honor please, unless he shows how he made the identification, whether by hearsay or otherwise.

580 The Court: Overruled.

By The Witness:

A. I have become personally acquainted with both of the individuals who were on that particular car on that date; the driver was James Irwin Marshall, the owner of the automobile, and his companion was Albert Swartz of Detroit, Michigan.

By Mr. Downing:

Q. Did you see the license plate on the car at that time?

A. Yes, sir, I did.

Q. What was it?

A. 1950 Michigan, EM-9645.

Q. Now, with respect to the truck that you said was pulled out of the property there at 215 to 217 East Erie, what type of truck was that?

A. It was an old green panel Chevrolet.

Q. Was there any inscription on the car at that time, or the truck?

A. Yes, the door was marked, I believe, "F. White, 4111 South Pulaski."

Mr. Walsh: What was the number? Excuse me.

The Witness: 4111—4111.

By Mr. Downing:

581 Q. Approximately how long was the Buick backed into the big double door at the rear of 215 to 217 East Erie?

A. The Buick was not backed in there very long, probably five to ten minutes at the most.

Q. Then what happened?

A. The Buick pulled out of the garage and Mr. Swartz got back in the car and then Mr. MacLeod backed the truck back into the garage and closed the door, and locked it, and the Buick proceeded rather slowly, as if he didn't know just—

The Court: Never mind the "as if".

Mr. Callaghan: Objection.

The Court: Sustained.

By Mr. Downing:

Q. What did the Buick then do?

A. The Buick then left the immediate vicinity of the garage and proceeded to within about forty feet of where I was stationed at that time, and turned and went and exited out of the alley.

As he went past me I was able to see right in the window of the car, and he had the back seat full of cartons marked "Kodak".

Q. And where did Mr. MacLeod go at that time?

582 A. Mr. MacLeod, as I said, locked the garage door and came on back, walked around the building and back to the front of the building of 215 East Erie.

583 Q. After you saw the car proceed out of the alley, that is the Buick car proceed out of the alley, then what did you do?

A. I notified—

Mr. Callaghan: I object to this.

The Court: The conversation, yes.

Mr. Downing: He can tell, not any conversation, he can tell what he did.

Mr. Downing:

Q. What did you do? What did you next do to it?

Mr. Callaghan: I submit, if your Honor please not I

notified. That carries a conversation. To some act of his I have no objection, but notifies—

The Court: He can say he called. I don't want the subject.

Mr. Downing: There is no intention, I think your Honor, to bring out any conversation. It is merely the choice of words.

The Court: What he did.

By Mr. Downing:

Q. What did you do then?

A. I communicated the fact—

Mr. Walsh: I object to that.

584 Mr. Callaghan: I object to that.

The Court: You communicated with somebody?

By Mr. Downing:

Q. With whom?

A. With Agent Bruno Wilson of the FBI. I told him—

Q. Not what you told him. How did you communicate with him?

A. I communicated with him by walkie-talkie radio.

Q. Now, I show you—

By The Court:

Q. With Agent who?

A. Bruno Wilson.

The Court: Very well.

By Mr. Downing:

Q. I will show you photographs, government's exhibits 84, 85, 86, 87 and 88, each marked for identification, and ask you to look at those and ask you if you have seen them before?

A. Yes, I have.

Q. What relationship, if any, is there between the scenes illustrated therein and the location of the testimony about which you have just given?

Mr. Callaghan: That is objected to, if your Honor please. I object to the form of this question, letting
585 this witness try to state his conclusions about comparisons.

By The Witness:

A. Exhibit 84 is a photograph of the front of the building, 215 East Erie Street, and also this photograph shows the entrance to the alleyway which is the only way that you may enter.

Mr. Callaghan: I object to that.

Mr. Walsh: I object to that.

The Court: Overruled. The answer may stand.

By Mr. Downing:

Q. With respect to the alley illustrated therein, I ask you if that is the alley in which the Buick entered, as you have previously testified?

A. That is the same alley.

Q. With respect to Government's exhibit 85?

A. 85 is a photograph showing both 215 and I believe 221 East Erie Street, the property which I know about, Mr. MacLeod's rooming house.

Mr. Walsh: I object to that.

The Court: That may be stricken.

By Mr. Downing:

Q. Is that the property adjacent to the building identified as 215 East Erie?

A. Yes, it is.

586 Q. What is Government's exhibit 86?

A. 86 is a photograph made from the position where I was stationed at on the 27th of July, 1950, and it looks north and shows the entrance to the alleyway.

Q. Is that the same alley you have described as illustrated in Government's exhibit 84?

A. Yes, it is the same alley.

Q. With respect to Government's exhibit 87, what does that illustrate?

A. 87 is a photograph looking west in the alley at the rear of 215 to 217 East Erie Street.

Q. With respect to the large double door appearing in that photograph, I ask you if that is the door from which the truck was driven and into which the Buick was driven?

A. That is the same door.

Q. With respect to Government's exhibit 88, what does that illustrate.

A. That is a photograph also made from the position where I was stationed, on the 27th of July. It looks east into the same alleyway, shows the rear of 215 to 217 East Erie Street.

Q. By whom were those photos made?

A. I made these photographs myself.

Q. Do your initials appear thereon?

A. Yes, they do.

587 Q. By whom were those photographs developed?

A. These photographs were developed in my presence by Miss Gertrude Patch, a laboratory technician.

Q. Is she employed at the FBI?

A. Yes.

Q. As to each of those photographs, are they a true and correct representation of the property, 215 to 217 East Erie, at the time you took those photographs?

A. Yes, they are.

Q. On what date were these photos taken?

A. These were made the 26th of May, 1951.

Q. What date were they developed?

A. They were developed the same day.

Q. According to your recollection, do those pictures truthfully and correctly represent various portions of the building illustrated therein when you saw it on July 27, 1950?

Q. Yes, they do.

Q. Directing your attention to the defendant MacLeod, are you acquainted with where he resides?

A. Yes, I am.

Q. What address is that?

A. He resides at 1150 North Lake Shore Drive, Chicago, Illinois.

588 Q. Have you had occasion to see him at that address?

A. I have.

Q. When?

A. On November 8, 1950.

Q. Who was with you at that time?

A. Special Agent Edward Dailey and William H. Williams of the Federal Bureau of Investigation.

Q. Were you on the inside of his residence at that time?

A. Yes, I was.

Q. Did you have a conversation with the defendant MacLeod at that time and place?

A. Yes, I did.

Q. Will you relate in substance what you said or what anyone else said, and what the defendant MacLeod said at that time and place?

Mr. Walsh: Are these all the persons who were present?

Mr. Downing: Yes.

By Mr. Downing:

Q. Have you mentioned everyone else who was present?

A. Mr. Dailey, Mr. Williams and myself and Mr. MacLeod.

Q. Will you relate the conversation as best you can recall in substance?

589 A. The substance of the conversation on the morning of November 8th when I went to Mr. MacLeod's place of residence was—had to do—

Mr. Walsh: I object to that, your Honor. Relate what he said.

By The Court:

Q. What did you say and what did he say?

A. I asked Mr. MacLeod—

Mr. Callaghan: May it be understood this conversation is limited as the others have been throughout the trial.

The Court: Certainly, to the defendant present and not to the other one.

By The Witness:

A. I asked Mr. MacLeod if his name was Kenneth MacLeod, to which he replied it was. I asked him if he lived there.

He said he did.

I then asked him to come along with us, that we wanted to speak with him. To which he agreed.

By Mr. Downing:

Q. Directing your attention to Government's exhibits 79, 80, 81, and 82, marked for identification, I will ask you to look at each of these exhibits and ask you if you
590 have seen those before?

A. Yes, I have.

Q. By whom were those photos taken?

A. These photographs were made by myself.

Q. On what date?

A. Three of them were made on the 26th day of May. This one was made on the 28th day of May.

Q. Which was the one that was made on the 28th of May?

A. No. 82.

Q. By whom were each of those photographs developed?

A. They were also developed by Miss Gertrude Patch, an employee of the Federal Bureau of Investigation, in my presence.

Q. Under your direction and supervision?

Q. At what address were those photographs taken?

A. These photographs were all made in the vicinity of 1150 North Lake Shore Drive.

Q. Is that at the residence where you had seen Mr. MacLeod, as you previously testified?

A. Yes, they are.

Q. Do each of those photos represent a true and correct representation of the property at 1150 North 591 Lake Shore Drive insofar as they are illustrated therein at the time you took these pictures?

A. Yes, they do.

Q. Will you explain the photograph, Government's exhibit 79, as to what that represents?

A. Exhibit 79 is a photograph of the rear of 1150 North Lake Shore Drive, looking south in the alley, which is the entrance of that address.

Q. Off of what street do you enter into the alley?

A. That is Division, East Division.

Q. Approximately how far is that from the corner of Division and Lake Shore Drive?

A. I would say it is about 90 or 100 feet.

Q. Which way, east or west?

A. That is west of Lake Shore Drive.

Q. Government's exhibit 80, what does that represent?

A. No. 80 is a photograph of the same address, 1150 North Lake Shore Drive, in the alleyway looking north.

Q. With respect to the smaller of the doors illustrated in that photograph, I will ask you if that is the entrance of where you visited the defendant MacLeod, on November 8th?

A. Yes, it is.

Q. With respect to Government's exhibit 81, what 592 does that represent?

A. Photograph 81 is a closeup photograph looking south at the rear of 1150 North Shore Drive, showing the entranceway into Mr. MacLeod's residence.

Q. Government's exhibit 82, what does that represent?

A. 82 is a photograph of the alley looking east, showing the corner of Mr. MacLeod's residence at 1150 Lake Shore Drive, showing a parking place just south of his residence.

Q. With respect to the first window appearing opposite the alleyway there, on Government's exhibit 82, I will ask you if you know that is the window in the residence of the defendant MacLeod's property?

A. Yes, it is.

previously testified to?

A. Yes, I have.

Q. On what date did you have that conversation?

A. It was the same day, November 8, 1950.

Q. Where did you have that conversation?

A. At the office of the FBI, in the Bankers Building, Chicago, Illinois.

Q. Who was present at that time, Mr. Higgs?

593 A. Special Agent McCormick and myself spoke with Mr. MacLeod, and Special Agent Stefanak was in momentarily and out of the room.

Q. As best you can recall, will you relate what the conversation was, identifying who said what?

A. We asked Mr. MacLeod for his full name.

He stated that his name was Kenneth J. MacLeod; that he lived at 1150 Lake Shore Drive. He told us that he was a partner—

Mr. Walsh: Is this in response to questions?

By Mr. Downing:

Q. This is what Mr. MacLeod said?

A. Mr. MacLeod told me—

Mr. Walsh: I would like to have what each of them said.

The Court: I think he is coming to it.

Mr. Downing: He is doing it as best he can, your Honor.

By Mr. Downing:

Q. Go ahead.

A. Mr. MacLeod told us that he was a partner in the operation of a rooming house at 215 to 217 East Erie Street, Chicago, Illinois. His partner in the operation of the rooming house was Kenneth Gordon. He said he was on-
594 ly operating that as a front for Mr. Gordon, because—

Mr. Walsh: I object.

The Court: What are you objecting to?

Mr. Walsh: He said it is, or did you ask him some questions?

By The Witness:

A. This was in response to the question of what his business was. He explained that he was a partner with Mr. Gordon at 215 East Erie Street and that further, that the reason he was a partner with him was Mr. Gordon was trying to rent that property. He could not obtain a

lease to it. The lease was obtained in his name, Mr. MacLeod's name.

Mr. Walsh: I move to strike the remark about "front". That was obviously a conclusion of the witness.

Mr. Downing: Just a minute.

By The Witness:

A. Those were his words.

By Mr. Downing:

Q. Did he use the words "he was a front"?

A. Yes.

Mr. Callaghan: I submit the witness should be advised not to take part in the colloquy between counsel and the Court.

595 The Court: Proceed.

By Mr. Downing:

Q. What else was said at that time?

A. He said in the operation of that rooming house at 215 to 217 East Erie Street he had possession and control of a garage located at the building marked 217 East Erie Street; that he had the—he had access to the property. He had the keys to the property. He pointed out—

Mr. Walsh: I object to this.

The Court: State what he said.

By Mr. Downing:

Q. State what he said.

A. Mr. MacLeod said the income from that property was divided one-third to Kenneth Gordon and one-third to MacLeod—I am sorry, two-thirds to Kenneth Gordon, because he said that was the nature of their partnership.

We asked Mr. MacLeod about film in the garage at the rear of 217.

Mr. Walsh: I suggest he can tell us what he said.

By The Court:

Q. What did you ask him?

A. I asked him if he had any film or if he knew
596 about any film in the garage at the rear of 217 East Erie Street. To which he replied he did not have any film back there. He never seen any film back there. If there had been any film back there he would have known it.

He said he had control of that garage and knew what was in the garage.

In connection with that I asked him about that truck which I mentioned previously.